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In The

Supreme Court of the United States

October Term, 1990

JAMES G. LEDBETTER, COMMISSIONER,
GEORGIA DEPARTMENT OF HUMAN RESOURCES,

Petitioner,

v.

MARTA O. TURNER, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether recipients of public assistance who received a lump sum of money which would otherwise result in termination from assistance may keep public assistance payments to which they were not entitled under federal law because of deficiencies in the notice of termination sent to them.

2. Whether a federal court may, consistent with the Eleventh Amendment, enjoin a state from recouping overpayments made to recipients of public assistance where such an injunction has a direct impact on the state treasury and serves only compensatory or deterrence interests.

PARTIES TO THE PROCEEDING IN THE COURT OF APPEALS

The parties to the proceeding below were:

Plaintiffs-Appellees:

Marta O. Turner

Irene Edwards

Margie Ray

Shirley Evans

On their own behalf and on behalf of all persons similarly situated.

Defendant-Appellant:

James G. Ledbetter, Commissioner, Georgia Department of Human Resources

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GEORGIA DEPARTMENT OF HUMAN RESOURCES,

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v.

MARTA O. TURNER, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Petitioner James G. Ledbetter, Commissioner of the Georgia Department of Human Resources, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in the above-entitled proceeding on July 19, 1990.

OPINION BELOW

The opinion of the Court of Appeals for the Eleventh Circuit is reported as *Turner v. Ledbetter*, 906 F.2d 606

(11th Cir. 1990), and is reprinted in the Appendix hereto, page 1a *infra*.

The memorandum decisions and judgment of the United States District Court for the Northern District of Georgia (Murphy, D.J.) have not been reported. They are reprinted in the Appendix hereto, page 10a, *infra*.

JURISDICTION

Respondents brought this action under 42 U.S.C. § 1983 in the Northern District of Georgia. On October 13, 1989, the District Court entered judgment in this case in accordance with its previous orders of June 24, 1987, March 30, 1989, June 30, 1989, and September 13 [sic, 19], 1989. These orders are reprinted in the Appendix hereto, pages 10a, *infra*. Upon appeal by Petitioner to the Court of Appeals, the Court on July 19, 1990, entered a judgment and an opinion affirming the Northern District's judgment. See p. 1a, *infra*.

The jurisdiction of this Court to review the judgment of the Eleventh Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Eleventh Amendment to the United States Constitution:

> The Judicial Power of the United States shall not be construed to extend to any suit in law or

equity, commenced or prosecuted against one of the United States by Citizens of Another State, or by Citizens or Subjects of any foreign State.

42 U.S.C. § 602(a)(17):

A State plan for aid and services to needy families with children must –

provide that if a child or relative applying for or receiving aid to families with dependent children, or any other person whose need the State considers when determining the income of a family, receives in any month an amount of earned or unearned income which, together with all other income for that month not excluded under paragraph (8), exceeds the State's standard of need applicable to the family of which he is a member –

(A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all other income received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family, and

(B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A); . . .

42 U.S.C. § 602(a)(22):

A State plan for aid and services to needy families with children must –

– provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan, and, in the case of –

(A) an overpayment to an individual who is a current recipient of such aid (including a current recipient whose overpayment occurred during a prior period of eligibility), recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member, except that such recovery shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income (without application of paragraph (8)), is less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income (and, in the case of an individual to whom no payment is made for a month solely by reason of recovery of an overpayment, such individual shall be deemed to be a recipient of aid for such month);

(B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State law against the income or resources of the individual or the family; . . .

STATEMENT OF THE CASE

The Aid to Families With Dependent Children (AFDC) program is a cooperative federal-state program designed to provide needy families with financial assistance. Congress establishes the statutory framework for

the AFDC program with oversight through the Department of Health and Human Services. The program is funded in part by state funds and is administered by the states. In Georgia, the program is administered by the Georgia Department of Human Resources.

Eligibility for AFDC is determined by, among other things, a family's resources and income. The Omnibus Budget Reconciliation Act of 1981 (OBRA) contained a provision changing the budgeting of a lump sum of money, *i.e.*, a non-recurring amount larger than the family's normal income. Pub. L. No. 97-35, § 2034, 95 Stat. 357, 845 (1981). Prior to OBRA, a lump sum was treated as a resource. Once the lump sum was depleted below the $1,000 resource limit, a family who received a lump sum or windfall amount, could again be eligible for assistance. Through the lump sum provision, Congress provided that a lump sum be budgeted as income. 42 U.S.C. § 602(a)(17). The amount of the lump sum, combined with other income, is divided by the standard of need,[1] resulting in the number of months for which the family will be ineligible for assistance. See *Lukhard v. Reed*, 481 U.S. 368 (1986). The rationale of the lump sum rule is to have families supported by resources other than public assistance where those resources are available. *Id.* The lump sum rule became effective October 1, 1981. The Georgia Department of Human Resources changed its policy in conformance with the change in the federal law.

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[1] The standard of need is an amount set by the states. See *Rosado v. Wyman*, 397 U.S. 397, 408 (1969); *Dandridge v. Williams*, 397 U.S. 471, 473 (1969); *King v. Smith*, 392 U.S. 309, 318 (1967).

Respondents are or were recipients of AFDC in Georgia, each of whom received some type of lump sum payment which rendered them ineligible for assistance for a period of time. Respondents brought this class action pursuant to 42 U.S.C. § 1983 alleging two claims concerning the notice provisions of the AFDC program. First, Respondents alleged that Georgia had failed to properly implement the lump sum rule by failing to give all AFDC recipients advance written notice of the change in regulations. Second, the complaint alleged that at the time they actually received a lump sum of money, the state failed to give Respondents adequate notice of termination of their benefits.

On June 24, 1987, the trial court entered its order granting Respondent's Motion for Summary Judgment in part. See p. 31a, *infra*. The Court ruled that the lack of advance written notice of the change in lump sum budgeting violated 45 C.F.R. §§ 206.10(a)(2)(i), 206.10(a)(7). See p. 37a, *infra*. The Court further found that the written notice provided after recipients actually reported the receipt of a lump sum was inadequate and violated 42 C.F.R. § 205.10(a)(4)(i)(B). See p. 40a, *infra*.

The Court did not in the June, 1987, order require any declaratory or injunctive relief but rather continued that issue until a later hearing. See p. 44a, *infra*. Subsequent to the Court's Order of June, 1987, the parties entered into negotiations to resolve many of the pending relief issues. The parties filed briefs concerning the issues which could not be resolved. Following this Court's decision in the case of *Gardebring v. Jenkins*, 485 U.S. 415 (1988) (holding

that AFDC recipients were not entitled to advance written notice of changes in the lump sum budgeting procedures), the District Court granted Petitioner's Motion for Reconsideration of the June, 1987, order on that issue. See Order of March 30, 1989, p. 17a, *infra*.

On the relief issues, the District Court also adopted those elements of relief upon which the parties agreed. These elements included changes in AFDC policies to require that a more complete statement of the reasons for termination be sent to recipients who are terminated because of the lump sum rule and training for case workers on the new policies. See pp. 20a, 29a, *infra*. The Court subsequently required notice relief pursuant to *Quern v. Jordan*, 440 U.S. 332 (1979). The Court required a brief notice to be sent to the recipients of public assistance informing them to contact their caseworkers if they had received a lump sum award for a review of their file. See Order of June 30, 1989, p. 15 *infra*. These notices were sent in all September, 1989, assistance checks and Medicaid mailings. The Court entered judgment in the case on October 13, 1989, in accordance with its previous Orders. See p. 10a, *infra*.

The ruling in controversy in this case concerns the remaining relief provisions ordered by the Court. See Order of March 30, 1989, p. 28a, *infra*; Order of June 30, 1989, p. 13a, *infra*. The District Court enjoined the Petitioner from recouping any monies paid to Respondents which would otherwise be overpayments as a result of receipt of a lump sum. See pp. 13a, 28a, *infra*. The District Court reasoned that these amounts were not "overpayments" because of the deficiencies in the notice. P. 14a, *infra*. Further, the District Court found no bar to this

injunction in the Eleventh Amendment, deeming it an injunction to prevent future violations of federal law. *Id.*

Federal statute and regulations require the state to correct any overpayment or underpayment of assistance. In this regard, 42 U.S.C. § 602(a)(22) requires the State to assure that it will make collections of all overpayments. Further, 45 C.F.R. § 233.20(a)(13) provides that states must collect overpayments, including those resulting from assistance paid pending hearing decisions. Overpayment is defined as "a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible." *Id.* The regulations in Georgia concerning collection of overpayments similarly require the collection of all overpayments, regardless of fault.

Many of the class members in this case have overpayments resulting from their receipt of a lump sum. Overpayments in the AFDC program can result from several sources. In the case of AFDC recipients who are terminated from assistance, the recipient may appeal that decision and must receive a hearing. *Goldberg v. Kelly*, 397 U.S. 254 (1969); 45 C.F.R. § 205.10(a). Benefits may not be terminated until after a decision following the hearing unless the recipient requests that assistance be discontinued pursuant to 45 C.F.R. § 205.10(a)(6)(i)(c).[2] If benefits are continued and the agency is ultimately upheld on

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[2] Under a few other circumstances enumerated in 45 C.F.R. § 205.10(a)(6)(i), benefits may be suspending pending a hearing. Those circumstances include: where the sole issue is one of law, or where a change occurs in the grant while the hearing is pending and the recipient fails to request a hearing.

appeal, the recipient will have an overpayment which must be collected. Overpayments in lump sum cases could also result from other problems, including untimely reporting of receipt of the lump sum by the recipient or agency delay in making changes in the case.

On appeal to the Eleventh Circuit, the Department challenged only the injunctive relief prohibiting the collection of overpayments. The Eleventh Circuit affirmed the District Court, holding that no overpayment existed "because of inadequate notice of termination." See p. 6a, *infra*. The Court further found no Eleventh Amendment bar to enjoining recoupment of these funds. See p. 8a, *infra*. It is from this decision of the Eleventh Circuit that Petitioner brings this Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE ELEVENTH CIRCUIT THAT ASSISTANCE PAID TO RESPONDENT CLASS MEMBERS IN EXCESS OF AMOUNTS AUTHORIZED BY FEDERAL LAW ARE NOT OVERPAYMENTS PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT.

States which participate in the Aid To Families With Dependent Children program administer public assistance programs which involve thousands of recipients, millions of dollars and myriad state and federal regulations. Inevitably, there will be errors, either caused by the recipient or resulting solely from the agency. See *Atkins v. Parker*, 472 U.S. 115, 127 (1985). One issue upon which confusion exists among the circuit courts is what remedy

is appropriate where the agency errs in notifying recipients of termination or reduction of benefits. In the current case, Petitioner submits that the Eleventh Circuit erroneously concluded that where the agency errs in notifying AFDC recipients of termination of benefits, payments which were made to recipients in excess of otherwise valid eligibility provisions are not overpayments which the state can recoup. The Eleventh Circuit reasoned that agency error in notifying recipients of changes in their benefits estops the state from effectuating that change or from recouping benefits which were clearly in excess of amounts authorized by Congress. In this regard, the Eleventh Circuit stated: "By failing to provide adequate notice, the state's attempted termination of the recipients' AFDC benefits became invalid." See p. 6a, *infra*.

On at least two occasions, the issue of remedies in case of inadequate notice has come before this Court, but has not been reached given the majority's ruling on other issues. See *Gardebring v. Jenkins*, 485 U.S. 415 (1988); *Atkins v. Parker*, 472 U.S. 115 (1985). In the *Atkins* case, the First Circuit held that the Massachusetts Department of Public Welfare had failed to issue valid notices to affected food stamp recipients of reduction or termination of benefits. *Foggs v. Block*, 722 F.2d 933 (1st Cir. 1983), *rev'd sub nom. Atkins v. Parker*, 472 U.S. 115 (1985). The First Circuit held that the District Court had erred in ordering reinstatement of the benefits because of the ineffective notice. 722 F.2d at 939-940. Both sides petitioned for certiorari. Recipients petitioned on the remedy issue,

alleging error in the First Circuit's conclusion that restoration of benefits to all recipients was not warranted even though inadequacies were found by the Court in the notices of reduction or termination of benefits. The Department of Public Welfare petitioned for certiorari on the issue of the lawfulness of the notice. This Court granted both petitions; however, because the Court concluded that the notices were appropriate, the Court had no occasion to reach the remedy issue. 472 U.S. at 123.

Again, in *Gardebring v. Jenkins*, 485 U.S. 415 (1988), this Court was presented with the issue of the proper remedy for ineffective notice. In *Gardebring*, this Court considered the issue of whether advance written notice was required before the State could implement the lump sum rule. The Court overruled the Eighth Circuit's holding that such advance notice was required. The Eighth Circuit had further enjoined the Minnesota Department of Human Services from recouping overpayments made to respondents during their period of ineligibility. Because of the majority's holding on the notice issue, the Court did not reach the remedy issue. Nevertheless, Justice O'Connor, joined by Justice Brennan and in part by Justice Marshall, dealt with the issue in a separate opinion concurring in part and dissenting in part.[3] In this regard, Justice O'Connor wrote as follows:

> The Court of Appeals also concluded that the Department could be enjoined from recouping the payments that were made to respondent

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[3] Justice Marshall joined only in that portion of the opinion quoted.

> Jenkins during the period that her family was ineligible under the provisions of the new lump-sum rule. The court reasoned that, "[b]y failing to comply with the notice regulation, [the Department] failed to institute a legal change in its eligibility rules." 801 F.2d, at 301-302. This conclusion was clearly inconsistent with federal law. . . . Congress gave no indication whatsoever that the effective date for the new lump-sum rule could be delayed by the action or inaction of state agencies. *Whether or not Jenkins received notice in accord with the Secretary's regulation, therefore, the lump-sum rule applied to her* when her husband received the retroactive disability payment in 1983. The Department was accordingly required by federal law to recoup the overpayments that she received during her appeal of the Department's decision to apply the new lump-sum rule in her case.

Id. at 437-438. (Emphasis supplied).

As appears from the *Atkins* and the *Gardebring* cases, the issue of the appropriate remedy following invalid notice will continue to arise. Because the State of Georgia in this case does not contest the lower court's findings of inadequacy of notice, the remedy issue is squarely presented, offering an opportunity for this Court to finally resolve this important issue of federal law.

A. THE CONFLICT IN PRINCIPLE AMONG THE CIRCUIT COURTS CONCERNING THE APPROPRIATE REMEDY FOR INVALID NOTICE OF TERMINATION OF BENEFITS CREATES A NEED FOR GUIDANCE ON THE ISSUE BY THIS COURT.

Four circuit courts have addressed the issue of remedies in inadequate notice cases and have reached

differing results. The issue of the effect of improper notice on otherwise valid eligibility requirements has arisen in the Eleventh Circuit in the current case, in the Fourth Circuit in the case of *Kimble v. Solomon*, 599 F.2d *rev'd* 599 (4th Cir.), *cert. denied*, 444 U.S. 950 (1979), in the First Circuit in the case of *Foggs v. Block*, 722 F.2d 933 (1st Cir. 1983), *rev'd on other grounds sub nom. Atkins v. Parker*, 472 U.S. 115 (1985), and in the Eighth Circuit in *Slaughter v. Levine*, 801 F.2d 888 (8th Cir. 1986), *rev'd sub nom. Gardebring v. Jenkins*, 485 U.S. 415 (1988). These cases clearly show a conflict in the principles applied by these circuit courts.[4]

Kimble v. Solomon, 599 F.2d 597 (4th Cir. 1979), involved an across-the-board reduction in medicaid benefits. The court found that the State of Maryland's failure to comply with notice regulations giving individual notice to each affected recipient resulted in Maryland not instituting a legally effective reduction in benefits. *Id.* at 604. As such, the majority required the State of Maryland to pay medicaid benefits according to the previous benefits levels until notice could be sent to all recipients. *Id.* at 607. The Fourth Circuit held that where the state "failed to comply with the notice regulations, it has not instituted a legally effective reduction in its Medicaid benefits." *Id.* at 604. The *Kimble* case was relied upon by the

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[4] These cases span several years, involve slightly different facts, and involve three different types of assistance programs, *i.e.*, AFDC, food stamps and Medicaid. As such, these cases represent a conflict in principle among the circuits rather than a conflict in decisions on identical issues. This Court has recognized that a conflict in principle may justify review by this Court. *See, e.g., Ivan Allen Co. v. United States*, 422 U.S. 617, 623-24 (1975); *Goldberg v. Kelly*, 397 U.S. 254, 261 (1969).

Eleventh Circuit in the current case in holding that inadequate notice rendered Respondents' terminations invalid. See p. 6a, *infra*.

A different principle was applied in the First Circuit in *Foggs v. Block*, 722 F.2d 933 (1st Cir. 1983), *rev'd on other grounds sub nom. Atkins v. Parker*, 472 U.S. 115 (1985). In *Foggs*, the First Circuit considered the issue of what remedy was appropriate where improper notice had been given to food stamp recipients of changes in their benefits. In *Foggs*, an across-the-board change in federal law reduced the food stamp entitlement of 16,000 Massachusetts food stamp recipients. The Massachusetts Department of Public Welfare sent a notice to all affected food stamp recipients advising them that their benefits would be reduced or terminated. The notice did not indicate the specific amount of reduction, nor did it indicate the recipients' new benefit amounts. The First Circuit found that the notice violated the due process rights of recipients in that the notice was difficult to read, difficult to comprehend, ambiguous and lacked specific information necessary to allow recipients to determine if a proper calculation had been made. The Court further found that the notice violated applicable federal regulations which required individual notice of any adverse action and specified the information which must be contained therein. *Id.* at 940.

On the relief issue, the First Circuit in *Foggs* reversed the remedy portion of the District Court's Order. The District Court had ordered the restoration of benefits pending delivery of a constitutionally adequate notice. The First Circuit found that restoration of benefits to all recipients was unwarranted, given the absence of any showing that a substantial percentage of food stamp

recipients had their benefits improperly reduced or terminated. The Court further found that "restoration of benefits would constitute a windfall to recipients and would result in the continuation of benefits at a level exceeding that authorized by Congress." *Id.* at 941. In *Atkins v. Parker*, 472 U.S. 115 (1984), this Court reversed the holding of the First Circuit that notice was required and therefore did not reach the relief issue.

As illustrated in the current case and the other cases discussed above the issue of whether invalid notices render inapplicable otherwise valid eligibility requirements recurs in the circuit courts. The Eleventh Circuit has followed the Fourth's Circuit's reasoning that an inadequate notice of reduction or termination of benefits renders invalid the State's attempt to affect the change in benefit levels. The First Circuit has taken a different approach, recognizing that restoring benefits to recipients who received an inadequate notice would negate otherwise valid eligibility requirements. This Court should grant certiorari in this case to resolve the conflicting principles applied by the circuits on the issue of appropriate relief in cases of inadequate notice.

B. THE DECISION OF THE ELEVENTH CIRCUIT IS IN CONFLICT WITH LEGAL PRINCIPLES ANNOUNCED BY THIS COURT AND WITH APPLICABLE STATUTES.

In this case, Congress has established the lump sum rule at 42 U.S.C. § 602(a)(17). The rule renders ineligible AFDC recipients for the time period in which their lump sum payment rather than public assistance should be used to support the family. *Lukhard v. Reed*, 481 U.S. 368,

372 (1986). The Eleventh Circuit has improperly linked notice requirements to eligibility requirements. That is, the adequacy or inadequacy of a notice does not affect whether or not recipients are eligible or ineligible for benefits. *See Gardebring*, 485 U.S. at 437-438 (O'Connor, concurring in part, dissenting in part). These respondents were ineligible under the lump sum rule whether or not they received proper notification of the termination.

The need for review by this Court is evidenced by comparing the Eleventh Circuit's decision in this case to this Court's opinions concerning whether recipients are relieved of eligibility requirements where the agency has mislead the recipient concerning those requirements. In this regard, the Eleventh Circuit's opinion in the current case is contrary to the principle announced by this Court in the case of *Schweiker v. Hansen*, 450 U.S. 785 (1981). In that case the respondent met with a representative of the Social Security Administration (SSA) to inquire whether she was eligible for "mother's insurance benefits" under § 202(g) of the Social Security Act, 42 U.S.C. § 402(g). The representative erroneously told her that she was not and she left the office without filing a written application. By the terms of the Act and the implementing regulations, benefits are available only to eligible persons who have filed a written application. 450 U.S. at 786. The SSA Manual instructed field representatives to advise applicants to file written applications. The respondent eventually filed an application after learning she was in fact eligible and began receiving benefits. Pursuant to the Act, she also received retroactive benefits for the preceding twelve months, the maximum retroactive benefit allowed by the Act. She contended, however, that she should also

receive retroactive benefits for the twelve months preceding her interview with the field representative, alleging that but for his erroneous statement she would have applied at that time.

This Court in *Schweiker* held that, although the field representative misinformed Respondent, the government was not estopped from requiring compliance with its regulations. The Court recognized "the duty of all courts to observe the conditions defined by Congress for charging the public treasury." 450 U.S. at 788. In the current case the Eleventh Circuit has entirely ignored the conditions placed upon eligibility by the lump sum rule, 42 U.S.C. § 602(a)(17). There has been no showing that, despite the deficiencies in the notice of termination, a substantial number of the class members had their benefits improperly reduced or terminated. Indeed, one purpose of the "*Quern* notices" which were sent to all AFDC recipients in accordance with the trial court's orders was to allow Respondent class members to contact their caseworkers and request a recalculation of their lump sum period of ineligibility. To allow them to keep the overpayments which were made during their periods of ineligibility would result in a windfall and would result in Respondents being allowed to keep benefits which were never authorized by Congress. See *Schweiker*, 450 U.S. 788; *Foggs*, 722 F.2d at 941.

The Eleventh Circuit decision not only violates the lump sum statute, but it violates the AFDC statute concerning recoupment of overpayments. Pursuant to 42 U.S.C. § 602(a)(22), a state agency participating in the AFDC program is mandated to recoup all overpayments

made to ineligible recipients. Under the federal regulations, an overpayment "means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible." 45 C.F.R. § 233.20(a)(13)(i) (1988). Neither the statute nor the regulations provide as a remedy for a state's failure to adequately notify a recipient of a reduction or termination of benefits that the eligibility requirements will not be applied. See 47 Fed. Reg. 5648, 5672 (1982). This Court should grant certiorari where the opinion of the Eleventh Circuit violates the federal statutes governing the AFDC program.

II. THE COURT'S INJUNCTION AGAINST RECOUPMENT OF OVERPAYMENTS IN THIS CASE VIOLATES THE ELEVENTH AMENDMENT. THIS COURT SHOULD GRANT CERTIORARI TO REVIEW THIS ISSUE OF IMPORTANCE TO THE STATE.

The Eleventh Amendment to the United States Constitution bars suits against the states without their consent in federal courts. The Amendment provides:

> The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of Another State, or by Citizens or Subjects of any Foreign State.

Although the language of the Amendment expressly encompasses only suits against a state by citizens of another state, the Amendment has long been held to bar suit against a state by its own citizens as well. See *Hans v.*

Louisiana, 134 U.S. 1 (1890). Notwithstanding the Eleventh Amendment, this Court held in the landmark case of *Ex Parte Young*, 209 U.S. 123 (1908), that a federal court could enjoin a state official from enforcing a state statute which was violative of the United States Constitution. The rationale of the *Young* case is that federal courts may enjoin state officials where necessary to enforce the supreme law of the United States. Following the *Young* case, there has not been a serious question that a federal court may require compliance with federal law in the future and may order certain relief against a state official.

In the case of *Edelman v. Jordan*, 415 U.S. 651 (1974), this Court drew a distinction for purposes of the Eleventh Amendment between prospective relief, which may be awarded by a federal court, and retrospective relief which is violative of the Eleventh Amendment. In *Edelman* the Court held that the Eleventh Amendment prohibited an injunction ordering retroactive benefits under the federal Aged, Blind and Disabled Program. In this regard, the *Edelman* Court stated "[T]he rule has evolved that a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment." *Id.* at 663. The Court found that an injunction ordering retroactive benefits is in effect an award of money damages. Because of this impact upon the public treasury, the retroactive award of benefits violates the Eleventh Amendment. *Id.* at 664-665.

Clearly, any form of relief ordered against a state official may have some impact on the state treasury. In *Edelman*, as in the current case, an injunction requiring the State to conform its benefits program to federal law in

the future would obviously cost the state money. Nevertheless, requiring expenditures of the State's money as a necessary consequence of complying with prospective injunctive relief does not violate the Eleventh Amendment. *Id.* at 668. If the consequences to the state treasury are merely a necessary result of compliance with the prospective decree, the Eleventh Amendment is not violated. *Id.; Milliken v. Bradley,* 433 U.S. 267, 289 (1977). On the other hand, the back benefits which the Plaintiffs in *Edelman* were seeking did not have a merely ancillary effect on the state treasury but were in fact a form of compensation. *Id.*

In the current case, the Eleventh Circuit failed to focus on the purpose of enjoining the collection of overpayments. More specifically, the Court failed to recognize the important distinction between an injunction which has an ancillary effect on the state treasury, *i.e.,* a necessary consequence of conforming conduct to federal law in the future, with an injunction which forces expenditures analogous to money damages for the purposes of compensation. This critical distinction was best stated by this Court in *Green v. Mansour,* 474 U.S. 64 (1985):

> Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law . . . But compensatory or deterrence interests are insufficient to overcome the dictates of the Eleventh Amendment.

474 U.S. at 68 (citations omitted).

The injunction in the current case against the collection of overpayments has a direct negative impact upon

the state treasury which is not merely ancillary to prospective injunctive relief. Clearly, there are ancillary costs to the State of Georgia associated with the prospective relief ordered. For example, the Department was forced to expend funds to change its procedures regarding notices of lump sum termination and spent funds to train workers in the new procedures. Further costs were associated with the "*Quern* notices" and subsequent administrative reviews and hearings required by the District Court. These costs are permissible under the Eleventh Amendment as the necessary costs of complying with the Court's prospective relief and the State of Georgia has never contested the constitutionality of these orders. Enjoining the collection of overpayments, on the other hand, has a direct negative impact on the state treasury which can only be viewed as a form of compensation or as a deterrent. *Green* at 68. As in *Edelman v. Jordan*, 415 U.S. 651 (1974), the relief ordered in the current case is virtually indistinguishable from an award of damages against the State because it (1) would be paid from State funds and (2) is measured in terms of a monetary loss resulting from a past breach of a legal duty.

To illustrate the impact of enjoining the collection of overpayments, one can compare two hypothetical class members. Assume that "Ms. A" was receiving public assistance and received a lump sum payment rendering her family ineligible for a period of four months. When she was terminated from AFDC due to the lump sum rule, "Ms. A" received a notice which was not adequate under the federal regulations. "Ms. A" did not appeal the Department's decision and her benefits were in fact terminated for a four-month period. On the other hand,

"Ms. B" also received a lump sum payment which rendered her family ineligible for a four-month period. "Ms. B" received the insufficient notice that "Ms. A" received. "Ms. B" did request an administrative hearing on her case at the time she was notified of her ineligibility period. She was entitled to have her benefits continued pending the agency hearing pursuant to 45 C.F.R. § 205.10(a)(6). Therefore, her benefits continued during this entire four months of her ineligibility period while the hearing process ran its course. Assuming that the hearing officer ruled in favor of the Department, "Ms. B" now has an overpayment for the four months of benefits which she received during her period of ineligibility under the lump sum rule. "Ms. B" received not only the lump sum of money but also four months of benefits to which she was not entitled.

Returning to the case of "Ms. A", it is clear under the Eleventh Amendment analysis of *Edelman* that the federal court could not order that the State pay back "Ms. A" for the four months of benefits which she did not receive. To award "Ms. A" her four months of benefits clearly constitutes retrospective relief and amounts to compensation similar to a money judgment which would impact the state treasury. Therefore, the court could not order her benefits restored and "Ms. A" could not receive those four months of benefits from the federal court.[5] "Ms. B"

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[5] Of course, under the case of *Quern v. Jordan*, 440 U.S. 332 (1979), a Court may order "notice" relief. A *Quern* notice does no more than simply inform the class member of the conclusion of the federal court proceedings and that administrative

(Continued on following page)

on the other hand received her four months of benefits to which she was not entitled under the lump sum rule because of the stay pending appeal. 45 C.F.R. § 205.10(a)(6). Under the Eleventh Circuit's ruling, she will be allowed to keep those benefits.

The State's usual method of collecting overpayments made to a current recipient is to recoup a small portion of those amounts from the family's current AFDC checks. See 45 C.F.R. § 233.20(a)(13)(1989).[6] Recouping the overpayment from "Ms. B" would "settle the account" between the State and "Ms. B". That is, after recoupment, "Ms. B" would be in the position of having received benefits to which she was entitled and no more. Because the State is enjoined from recouping those monies from "Ms. B", the state treasury will be reduced by an amount equal to those four months of improperly paid benefits. Therefore, by enjoining the collection of overpayments, there is a very real impact on the state treasury.[7]

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hearings may be available to the class members. The Court may not issue a declaratory judgment on the law to dictate the outcome of those administrative hearings. *See Green v. Mansour*, 474 U.S. 64 (1985).

[6] In Georgia, the Assistance Payments Manual requires that deductions from recipients' checks to collect overpayments due to agency error be very small. The family must be allowed to retain 95% of the maximum grant for a family of that size.

[7] Of course, the impact on one case would be a small amount. The record does not contain exact figures on how many overpayments are outstanding due to the lump sum rule. However, the amount could be substantial when multiplied by all the class members in this case who have overpayments.

The illustration concerning "Ms. A" and "Ms. B" also shows the clear compensatory nature of an injunction against the collection of overpayments. If the State is prevented from recouping the improperly paid benefits paid to "Ms. B", then she has been allowed to keep benefits to which she was not entitled. This has a direct negative impact upon the State and can only have a compensatory effect on "Ms. B". Such compensatory interests do not overcome the Eleventh Amendment. *Green v. Mansour*, 474 U.S. 64, 68. The injunction against the collection of overpayments in the current case cannot be construed as anything other than compensatory or deterrent in nature. Such an injunction would have a direct impact on the state treasury. As such, the injunction violates the Eleventh Amendment.[8]

As stated in *Edelman v. Jordan*, the difference between relief which is barred by the Eleventh Amendment and that which is permitted under *Ex Parte Young* "will not in many instances be that between day and night." 415 U.S. 651. At first blush, this case falls into that "twilight" area alluded to in *Edelman*. The difficulty of this issue can be seen by the experience in the Eighth Circuit. The district

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[8] In this case, not only would enjoining the collection of overpayments violate the Eleventh Amendment, it would unfairly distribute the State's limited public assistance resources. See *Goldberg v. Kelly*, 397 U.S. 254, 266 (1969). In the illustration above, "Ms. B" would be allowed to keep benefits to which she was not entitled depriving the State, and in turn *eligible* recipients, of that amount of money. By comparison, "Ms. A" is treated unfairly because she cannot recover for months of back benefits while "Ms. B" received her four months of benefits and need not pay that money back.

court in *Slaughter v. Levine*, 621 F. Supp. 509, 513-514 (D. Minn. 1985) correctly found that enjoining the collection of overpayments was tantamount to requiring the State to provide retroactive benefits. However, that part of the decision was reversed by the Eighth Circuit in *Slaughter v. Levine*, 801 F.2d 288 (8th Cir. 1986), *rev'd on other grounds sub nom. Gardebring v. Jenkins*, 485 U.S. 415 (1988). This issue under the Eleventh Amendment has arisen in the Eighth and Eleventh Circuits and will continue to create a source of confusion for the circuit courts. This Court should grant certiorari in this case to resolve this important issue under the Eleventh Amendment.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant a writ of certiorari to review the judgment of the Eleventh Circuit.

Respectfully submitted,

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Marta O. TURNER, Irene Edwards, Margie Ray, on behalf of themselves and all others similarly situated, Plaintiffs-Appellees,

Shirley Evans, Intervenor-Plaintiff,

v.

James G. LEDBETTER, in his official capacity as Commissioner of the Georgia Department of Human Resources, Defendant-Appellant.

No. 89-8907.

United States Court of Appeals,
Eleventh Circuit.

July 19, 1990.

Appeal from the United States District Court for the Northern District of Georgia.

Before HATCHETT and CLARK, Circuit Judges, and MORGAN, Senior Circuit Judge.

HATCHETT, Circuit Judge:

In affirming the district court, we hold that the state of Georgia may not recoup funds paid to families pursuant to the Aid to Families with Dependent Children ("AFDC") program because the payments did not constitute "overpayments," and did not violate the eleventh amendment to the United States Constitution, or applicable statutes and regulations.

FACTS

The AFDC program provides cash support to children who have been deprived of the care and support of one of their parents through either death, continued absence, incapacity or unemployment. 42 U.S.C. § 606(a).

The state of Georgia and the federal government funds the program. In order to receive federal funds, however, the program must comply with federal law, and the state is not permitted to impose eligibility requirements which exclude from coverage individuals who are eligible under federal statutes. 42 U.S.C. §§ 601, 602(a). *Carleson v. Remillard*, 406 U.S. 598, 92 S.Ct. 1932, 32 L.Ed.2d 352 (1972).

James Ledbetter, Commissioner of the Georgia Department of Human Resources, is responsible for the State of Georgia's administration and operation of the AFDC program. Ledbetter is also responsible for ensuring that the state's program, as implemented, does not violate federal law.

Prior to 1981, AFDC recipients who received a lump sum of money were deemed in receipt of a "resource."[1]

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[1] A federal regulation describes "lump-sum income":

> When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income (including for AFDC, title II and other retroactive monthly benefits, and payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it is paid, i.e., monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc.), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income

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Under the law at the time, recipients of lump sum payments were terminated from the program until the lump sum was depleted below the $1,000 limit. Once the funds were depleted below that amount, the recipient could once again apply for aid.

After passage of the Omnibus Budget Reconciliation Act of 1981, a lump sum of money is deemed "income" to the recipient. Additionally, the new law requires that the recipient be terminated from the program for a "fixed period" of time, determined by dividing the lump sum amount by the recipient's "standard of need."[2] After the new rule became effective, the state of Georgia changed its policy to conform with federal law. In accordance with its new policy, the state terminated individuals who reported receiving a lump sum. Shortly after their terminations, these individuals received a computer-generated termination notice indicating the reasons for termination. Several of these individuals chose to appeal their terminations.

PROCEDURAL HISTORY

Individuals who are and were recipients of AFDC ("recipients") filed a class action lawsuit seeking

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by the monthly need standard for a family of that size. . . .

45 C.F.R. § 233.20(a)(3)(ii)(F) (1987).

[2] For example, if a family whose standard of need is $400 per month received a lump sum of $1200, the family would be cut off AFDC for three months.

declaratory and injunctive relief generally alleging that the state improperly applied the lump sum rule. Specifically, they alleged that (1) the state provided inadequate notice of the lump sum penalties, (2) the state provided inadequate notice of their termination, and (3) the state improperly discontinued their medicaid benefits without providing the required separate determination of Medicaid eligibility.

In granting summary judgment in favor of the recipients on all issues, the district court held that the state was required to provide advanced written notice of changes in the lump sum budgeting regulations, that the written notices provided were inadequate, and that the medicaid termination procedures were improper. The district court also held that because the state failed to provide adequate notice, the recipients were not legally terminated. Consequently, the district court concluded that the state could not recoup any funds which the recipients received while appealing their terminations.

Following the Supreme Court's decision in *Gardebring v. Jenkins*, 485 U.S. 415, 108 S.Ct. 1306, 99 L.Ed.2d 515 (1988), the state moved for reconsideration. The district court vacated its holding that the state needed to provide written advance notice before terminating claimants, but refused to vacate its holding enjoining the state from recouping overpayment because the state gave the recipients inadequate notice of their rights and obligations under the new law.

CONTENTIONS OF THE PARTIES

The state contends that the district court erred when it enjoined the recoupment of "overpayment" from AFDC

recipients. According to the state, the district court's ruling violates both the eleventh amendment and the federal statutes and regulations governing the AFDC program.

The recipients contend that the state is prohibited from recouping funds which they received while appealing their termination. They argue that because they received insufficient notice of their rights and obligations under the program, the state's attempted termination was ineffective. Accordingly, they maintain that they were entitled to the funds received and did not receive an overpayment.

ISSUE

The sole issue is whether the district court erred by enjoining the state from recouping funds which the recipients received in violation of current AFDC program requirements but which they were entitled to receive under the previous law.

DISCUSSION

Federal law requires that a state agency promptly correct any overpayment of aid under a state plan administering the AFDC program. 42 U.S.C. § 602(a)(22). Under federal regulations, an overpayment "means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible." 45 C.F.R. § 233.20(a)(13)(i).

Statutory Provisions

Federal regulations require that AFDC applicants be informed of "their rights and obligations under the program." 45 C.F.R. § 206.10(a)(2)(i) (1987). In *Gardebring v. Jenkins*, 485 U.S. 415, 108 S.Ct. 1306, 99 L.Ed.2d 515 (1988), the Supreme Court held that states need not provide advance written notice concerning every specific change in eligibility to satisfy the federal notice regulation. Consequently, the Court held that the state of Minnesota provided adequate notice by distributing two printed brochures that generally described the AFDC program and the recipient's duty to report all household income monthly.

In this case, the district court found that the state did not provide the recipients with sufficient notice to satisfy the federal regulations. The state has not appealed the district court's finding on this issue. Consequently, this case is distinguishable from *Gardebring*.

Title 45 C.F.R. § 206.10(a)(7) provides that "[i]n cases of proposed action to terminate, discontinue, suspend or reduce assistance, the agency shall give timely and adequate notice. Such notice shall comply with the provisions of § 205.10 of this chapter." By failing to provide adequate notice, the state's attempted termination of the recipients' AFDC benefits became invalid. *See Kimble v. Solomon*, 599 F.2d 599, 604 (4th Cir.), *cert. denied*, 444 U.S. 950, 100 S.Ct. 422, 62 L.Ed.2d 320 (1979) (because of failure to give notice required by federal regulations, state had not "instituted a legally effective reduction in . . . benefits"). As a result, any benefits that the recipients received must be examined under pre-1981 law to

determine whether the recipients were eligible to receive such funds. Neither party suggests that the recipients received funds to which they would not be entitled under pre-1981 law. Any funds so received would clearly be an overpayment and subject to recoupment by the state.

The state now seeks to recoup funds which the recipients were entitled to under pre-1981 law. Because the state did not terminate the recipients in accordance with federal notice requirements, the recipients' entitlement to aid was not affected. Consequently, they did not receive an overpayment. To do as the state urges, would frustrate the federal regulations by allowing the state to violate the federal regulations requirement of adequate notice, and at the same time claim to have legally terminated AFDC recipients.

Eleventh Amendment

We also agree with the district court's conclusion that the injunction against the recoupment of funds paid to these recipients does not violate the eleventh amendment. The eleventh amendment grants a state immunity from suits by an individual. *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974). Under the Supreme Court's interpretation of the eleventh amendment, federal courts may grant prospective injunctive relief but may not include a retroactive award which requires the payment of funds from the treasury. *Edelman*, 415 U.S. at 677, 94 S.Ct. at 1362. The Court made it clear that an eleventh amendment violation does not occur where the injunction has an ancillary effect on the state treasury such that "[s]tate officials, in order to shape their official conduct to the mandate of the Court's decrees, would more likely

have to spend money from the state treasury than if they had been left to pursue their previous course of conduct." *Edelman*, 415 U.S. at 668, 94 S.Ct. at 1358.

The state argues that the present injunction against the recoupment of overpayment violates the eleventh amendment because it applies retroactively and has a direct impact on the state treasury. According to the state, the injunction allows the recipients to receive a "windfall" in that they are allowed to keep their lump sum payments as well as the benefits received during the pendency of their administrative appeal. This "windfall," says the state, has a direct impact on the state treasury and can only be viewed as a form of compensation. *See Green v. Mansour*, 474 U.S. 64, 68, 106 S.Ct. 423, 426, 88 L.Ed.2d 371 (1985) ("compensatory or deterrence interest are insufficient to overcome the dictates of the Eleventh Amendment.").

We agree with the district court's analysis and conclusion that the injunction in this case sought to prevent state officials from future violations of federal law. As the district court noted, individuals who did not appeal the state's improper termination of their benefits for inadequate notice are prohibited under *Edelman* from seeking damages for those benefits. *See Edelman*, 115 U.S. 656, 94 S.Ct. 1347. As we stated earlier, however, the recipients in this case, by successfully appealing the termination of their benefits on the basis of inadequate notice, did not receive an overpayment.

The eleventh amendment is not a bar in this case because the recipients are not seeking damages, but rather are seeking to prevent the state from essentially

accomplishing a legal termination of AFDC benefits without providing adequate notice under federal law. The state's attempt to characterize the injunction as involving a form of compensatory damages is unavailing. Funds which the recipients received while challenging their terminations were legally awarded. Consequently, their receipt of these funds cannot be fairly characterized as compensatory.

CONCLUSION

In conclusion, we hold that because the state failed to provide adequate notice, in accordance with federal law, the recipients in this case were not legally terminated; consequently, they did not receive an overpayment of AFDC funds. Additionally, we hold that the injunction prohibiting the recoupment of the funds paid to the recipients, does not violate the eleventh amendment. Accordingly, we affirm.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MARTA O. TURNER, IRENE EDWARDS, and MARGIE RAY, ON BEHALF OF THEMSLEVES [sic] AND ALL OTHERS SIMILARLY SITUATED,	*	CIVIL ACTION FILE NO. C-86-199-HLM
Plaintiffs	*	
v.	*	
JAMES G. LEDBETTER, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE GEORGIA DEPARTMENT OF HUMAN RESOURCES,	*	
Defendant	*	

JUDGMENT

(Filed Oct. 13, 1989)

The above case having come before this Court, and the parties having been represented by their attorneys of record, the Court having considered the issues herein hereby enters judgment as follows:

1.

Judgment is entered in accordance with the Orders of this Court as set forth on June 24, 1987, March 30, 1989, June 30, 1989, and September 13 [sic, 19], 1989.

2.

Plaintiffs are awarded costs in this matter.

This 12th day of October, 1989.

/s/ Harold L. Murphy
HAROLD L. MURPHY
JUDGE, UNITED STATES
DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MARTA O. TURNER, *et al.*,

Plaintiffs,

v.

JAMES G. LEDBETTER,

Defendant.

CIVIL ACTION
4:86-cv-199-HLM

ORDER
(Filed Sept. 19, 1989)

Defendant Ledbetter moves the Court to amend its order of June 30, 1989 to extend the time to and including September 1, 1989 for him to implement the notice relief requirements of the prior order. The motion is unopposed, and Ledbetter has informed the Court that the notices were sent out on September 1.

ACCORDINGLY, Defendant's motion for relief from the Court's order of June 30, 1989 is GRANTED. The notices sent out on September 1 were timely.

IT IS SO ORDERED, this the 19th day of September, 1989.

/s/ Harold L. Murphy
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MARTA O. TURNER, IRENE EDWARDS, MARGIE RAY, and SHIRLEY EVANS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

JAMES G. LEDBETTER, In His Official Capacity as commissioner of the Georgia Department of Human Resources,

Defendant.

CIVIL ACTION
4:86-cv-199-HLM

ORDER
(Filed June 30, 1989)

This case is before the Court on two remaining relief issues after the Court's Order of March 30 and April 19, 1988, and on Defendant's Motion to Reconsider the Court's ruling on one of those issues in its March 30 Order.

Recoupment of "Overpayments."

The Court in its Order of March 30, 1988, enjoined the Defendant from seeking recoupment of monies paid to plaintiffs who had their Aid to Families with Dependent Children (AFDC) Benefits continued during the pendency of their appeals after the Defendant's determination that they had become ineligible for AFDC benefits after receiving a lump sum income payment.

The Defendant contends that it is required to seek recoupment of these monies, pursuant to 45 C.F.R. § 233.20(a)(13), despite the fact that its notice to plaintiffs at the time they reported their lump sum income was found to be inadequate and illegal by this Court. Defendant contends that the eleventh amendment proscribes the injunction against these recoupments. The Court cannot agree.

It is true that for plaintiffs who had their benefits discontinued with inadequate notice the eleventh amendment is a bar to damages on a claim that their benefits were improperly discontinued. Such retrospective relief would be proscribed by the amendment. *Edelman v. Jordan*, 415 U.S. 651 (1974). The issue at hand, however, is different. Here the plaintiffs seek an injunction against future actions of the Defendant.

For plaintiffs who did not appeal, the Defendant *improperly discontinued benefits* because of the inadequate notice. For those who did appeal, there was no "overpayment," because the Defendant could not have legally discontinued their benefits. Since their [sic] was no legal overpayment, the Defendant may not seek recoupment of the benefits paid during the interim of the appeals. While the eleventh amendment is a bar to obtaining damages for past violations of the constitution, it is no bar to a plaintiff obtaining an injunction to prevent state officials from future violations of federal law. *Id.* For these reasons, the injunction against the Defendant seeking recoupments of benefits paid during the pendency of the plaintiffs' administrative appeals is REAFFIRMED.

Notice Relief

The Court hereby APPROVES the jointly-proposed notice submitted to the Court to be sent out in mailings by the Defendant. The sentence regarding overpayments SHALL BE INCLUDED.

The Court further approves the sending out of notices in the agreed upon manner as set out in the Defendant's "Supplemental Brief" of April 24, 1989: (1) inserting the notices in one month's mailing of all AFDC checks; (2) inserting a message similar in language to the AFDC notices in Medicaid mailings; (3) language similar to the AFDC notice to be printed in the form of 8½ x 11 inch flyers to be posted in Department of Family and Children Services offices, and a supply of these notices shall be given to Plaintiffs for distribution at community centers or in Georgia Legal Services offices or in other conspicuous places; (4) the media information office of the Department of Human Resources will issue public service announcements containing information substantially similar to the AFDC notice.

Because of the costs and impracticalities involved, the Defendant SHALL NOT BE REQUIRED to place notices in food stamp mailings or in any other similar public benefits mailings.

Defendant is ORDERED to send the notice approved by the Court to all those persons on its existing lists of persons who were determined to have been terminated from benefits as a result of the lump sum penalty as of July 1988. Because of the expense involved and the effort to locate the class members through the above mentioned means, the Defendant SHALL NOT BE REQUIRED to

compile additional lists as to persons determined to have been terminated as of July 1989.

The Defendant is GRANTED 60 days from the date of this Order to prepare and place the notices as prescribed.

ACCORDINGLY, the Defendant's Motion to Reconsider is DENIED; the parties SHALL UNDERTAKE notice relief to the class plaintiffs as set out herein above.

IT IS SO ORDERED, this the 30th day of June, 1989.

/s/ Harold L. Murphy
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MARTA O. TURNER, IRENE EDWARDS, MARGIE RAY, and SHIRLEY EVANS, On behalf of themselves and all others similarly situated,

Plaintiffs,

CIVIL ACTION
4:86-cv-199-HLM

v.

JAMES G. LEDBETTER, In His Official Capacity as Commissioner of The Georgia Department of Human Resources,

Defendants.

ORDER
(Filed March 30, 1989)

This case is before the Court on the remaining relief issues, subsequent to the Court's grant of summary judgment, and upon Defendant Ledbetter's motion to reconsider one of the issues adjudicated in that summary judgment.

I. The Motion To Reconsider

Defendant's motion to reconsider shall be GRANTED. The Court hereby VACATES that portion of the Court's Order of June 24, 1987, which provided that Defendant was required to provide to recipients of Aid to Families with Dependent Children (AFDC) advance written notice of changes in the lump sum budgeting regulations and procedures mandated by the Omnibus Budget

Reconciliation Act of 1981. The grant of the motion to reconsider is dictated by contrary holding of *Gardebring v. Jenkins*, ___ U.S. ___, 108 S.Ct. 1306, 99 L.Ed.2d 515 (1988), which overturned *Slaughter v. Levine*, 598 F.Supp. 1035 (D.Minn.), *aff'd*, 801 F.2d 288 (8th Cir. 1986), a case upon which the Court relied in deciding this issue on summary judgment.

II. The Pending Relief Issues

Plaintiffs have submitted to the Court a Proposed Order, of eleven paragraphs, for resolution of the remaining relief issues in this case. The Commissioner has objected to seven of these paragraphs. He is in substantial agreement with Paragraphs Two through Four and Paragraph Eleven. The substance of these shall be adopted by this Order. The remaining paragraphs shall be discussed, and adopted or rejected, as is set out *infra*.

A. Advance Written Notice.

The Defendant contests Paragraph One. That paragraph provides as follows.

> 1. The parties agree advance written notice will be provided by Defendants to applicants by assuring that each new applicant for AFDC signs a copy of the AFDC application containing a statement regarding the lump sum rule and is provided with a copy of Form 133 – Your Rights and Responsibilities under AFDC. Current recipients will be provided with this same information through the identification process turnaround document.

Commissioner Ledbetter contends that despite the parties alleged prior settlement of this issue, he should not be *required* to provide such notice after the *Gardebring* decision. While generally a party may be held to a settlement agreement which he has entered, despite a later attempt to renounce it, the Plaintiffs here have submitted no evidence that shows conclusively that the parties entered into a binding agreement for settlement of this issue. Therefore, in light of *Gardebring*, and the Court's grant of Ledbetter's motion to reconsider, this paragraph is REJECTED. Ledbetter is not *required* to provide the advance written notice as set forth in paragraph Number One.

The Court notes, however, that the Defendant already has changed its AFDC application form (Form 267) to contain a statement concerning the lump sum rule. Defendant also changed certain other documents to provide advance written notice and may in the future revise additional documents to include a statement concerning lump sum payments. Defendant further avers that it does not intend to revise Form 267 to remove the statement concerning lump sum payments, since such a change would create additional expense. Accordingly, Paragraph One is REJECTED and not made a part of this Order.

B. Notice of Termination of AFDC Benefits Upon Receipt of a Lump Sum.

The Defendant has affirmed that he is in agreement with the "substantive" parts of proposed Paragraphs Two through Four, and these portions of these paragraphs will

be ADOPTED. The stipulated portions of these paragraphs read as follows.

> 2. To avoid the problems of recipients receiving inadequate actual notice upon termination of benefits due to the lump sum rule, the Defendant's caseworkers shall be instructed that when a recipient reports the receipt of a lump sum, the caseworker shall immediately advise the recipient that he or she will be expected to live on the lump sum amount.
>
> 3. Adequate and timely notice shall be provided through the newly created form 249 LS, hand issued, in accordance with the policies and procedures set forth in the Department of Human Resources Public Assistance Manual Pages 8L-1 through 8L-12 of IV-110.
>
> 4. The issue of the treatment of the receipt of a lump sum of child support, which is addressed on Page 8L-8 of IV-110 of the Defendant's regulations, has not been litigated in and is not adjudicated by this lawsuit.

The Commissioner does not indicate approval of the Proposed Paragraph Five. The paragraph reads as follows:

> 5. Defendant is enjoined from sending the Form 249 computer generated denial notices at the denial of AFDC/Medicaid due to the receipt of a lump sum. Rather, Defendant will provide hand issued form 249-LS denial notices under the same procedures as termination notices.

This paragraph is ADOPTED. The issue it addresses has already been determined by the Court in its June 24 Order. The Defendant has proposed to continue sending computer generated denial notices to applicants who are denied as a result of the receipt of a lump sum. (Form

249). These denied applicants additionally will receive a hand-issued denial notice (Form 249 LS). The Court has already decided that the computer generated notices are inadequate, confusing, and sometimes misleading. Paragraph Five, therefore, shall be ADOPTED.

C. Medicaid.

The parties have been unable to resolve the remaining relief issues relevant to the Medicaid claims of the Complaint. Paragraphs Six through Eight of the Proposed Order address these issues. Paragraph Six reads as follows:

> 6. In response to this suit the Defendant has amended the State Assistance Payments Manual Pages 1, 2, and 3 of II-103 and Pages 1-12 of 315 C to comply with federal Medicaid law regarding the termination of Medicaid in all circumstances. While this is generally helpful to Plaintiff class it makes resolving this particular suit difficult because of several ancillary issues presented. To resolve this issue Plaintiffs propose that the Defendant insert a separate statement of Medicaid policies and procedures that relate only to lump sum Medicaid terminations. Exhibit ___. [sic] (Attached hereto as Attachment 2) The remainder of Defendant's Medicaid policy would not be a part of this order and is not decided upon by this Court and does not act as a bar to any of the issues, (other than those actually decided by the Court in Exhibit 2) from being litigated in the future.

Upon a careful review of the Defendant's amended pages of his "State Assistance Payments Manual," the Court concludes that the Plaintiffs' proposed insert is unnecessary. In its Order of June 24, 1987, the Court

declared that the policy of the Defendant was illegal, in which Medicaid assistance was automatically terminated upon the termination of AFDC after the recipient received a lump sum payment. Persons on AFDC are considered "categorically needy," but when cancelled from AFDC and no longer categorically needy, they may still be eligible for Medicaid coverage under certain other conditions. Essentially, the Court ruled that the Defendant could not automatically terminate persons from Medicaid coverage simply because they lose their AFDC-based, "categorically-needy" profile. They may still be eligible, and the Defendant must determine if they are otherwise eligible before he may terminate their coverage.

In complying with this Order, the Defendant went beyond the particulars of this case and changed its regulations regarding Medicaid terminations for *all* AFDC terminations, not only lump sum terminations. Plaintiffs, however, complain that the "state's proposed regulations are more generalized and less specific to the lump sum client." While this may be true, this lack of focus is necessitated by the comprehensive coverage of the regulations.

The Court is unpersuaded by the Plaintiff's arguments that the regulations must be specific to lump sum terminations or caseworkers will not follow them in those cases. Since they cover *all* AFDC terminations, the regulations clearly cover lump sum terminations. Their comprehensive scope should be applauded by the Plaintiffs. They benefit not only the class members here but also all other persons whose AFDC benefits are terminated.

The Court also does not find the regulations "oftentimes confusing, and downright contradictory," as is suggested by the Plaintiffs. The only alleged contradiction is the following:

> Page 33, paragraph 4-"If the client does not respond to form 248, certify only those individuals eligible as de facto medically needy." Page 33, paragraph 8-"If the client does not respond to Form 248 terminate Medicaid case."

Reply Brief of Plaintiffs at 4-5. These two sentences are not contradictory. The first concerns situations where the case record established that the client has an option of whom in the family unit to include or exclude, and the caseworker is directed to contact the recipient to determine who should be included. If no information is provided, the caseworker is instructed to certify only those individuals eligible as *de facto* medically needy.

The second situation is different. There, the case record contains insufficient information to determine continued *eligibility*, and the caseworker is directed to contact and instruct the family to submit information on eligibility. In this situation, if no information is provided, then the caseworker is to terminate the Medicaid case. There is no contradiction here.

Plaintiffs also contend that the proposed revisions "raise issues that this litigation was not filed to address." While this may be true, this Order does not constitute an approval of the revisions *in toto*. This Order approves the revisions only to the extent that they resolve the issues of this lawsuit now under consideration. Other issues that might arise from the manual's revisions are not

addressed or approved by this Court.[1] Accordingly, Paragraph Six is REJECTED; the Defendant's proposed revisions to its State Assistance Payments Manual, pages 1, 2, and 3 of II-103 and Pages 1-12 of 315 C, are hereby APPROVED as adequately resolving the claim that the Defendant has improperly automatically denied Medicaid when AFDC lump-sum terminations have been made.

The parties dispute the appropriateness of Plaintiffs' proposed Paragraph Seven. That paragraph reads as follows.

> 7. The Plaintiffs further argue that a separate notice of termination must be sent to applicants or recipients who are denied Medicaid after a final Medicaid determination has been made. The Defendant's policy would request information by a revised form of 248 and notify them at the same time that their benefits are being terminated if they do not respond.

A separate notice is required by the terms of this Court's Order of June 24, 1987. The Defendant's policy of sending Form 248, the ex parte notice, as both a request for further information and as a Medicaid termination notice is unreasonable and unworkable. In accordance with this Court's order, when the Defendant determines that an individual is no longer eligible to receive Medicaid, the Defendant is required to give adequate notice to the recipient of the termination of benefits in accordance

---

[1] The Court also does not decide the "actual availability" issue, 42 U.S.C. Section 1396a(a)(17)(B), nor the issue of medicaid eligibility for a child when the child is the recipient of a lump sum.

with the regulations. The notice must contain the following information required by 42 C.F.R. § 431.206:

> a. A statement of what action the agency intends to take;
>
> b. The reasons for the intended action;
>
> c. The specific regulations that support, or the change in Federal or State law that requires, the action
>
> d. An explanation of . . . The individual's right to request an evidentiary hearing . . . a State agency hearing; and
>
> e. An explanation of the circumstances under which Medicaid is continued if a hearing is requested.

The Form 248 Request for Information cannot fulfill these requirements, as the Court stated in the June 24 Order. Defendant is required to provide to Medicaid applicants or recipients who are denied or terminated Medicaid benefits a separate termination notice in addition to the Form 248. Accordingly, Paragraph Seven is hereby ADOPTED.

Paragraph Eight, also disputed, reads as follows.

> 8. Related to this issue is the time period that the client has to respond to these requests for information. Defendant urged that the caseworker be allowed to define a reasonable time for recipients to return information before their Medicaid is terminated. Plaintiffs argue that this is too amorphous and that a specific time period allowing enough time for the information to be obtained must be specified. Plaintiffs propose a "not less than 30 day" time period for recipients to respond to the form 248 request for information.

In light of the Court's resolution of the preceding issue, the Defendant's proposal that the caseworker be permitted to define a reasonable time on a case by case basis is adequate. The caseworker shall provide a "reasonable time" within which the recipient shall return information before Medicaid is terminated. If Medicaid is terminated because of a failure to respond, the basis of that decision, the failure to respond, will be shown on the recipient's separate termination notice, issued in accordance with the preceding portion of this Order. If a caseworker provides an unreasonably short period for response, and terminates benefits because of the failure to respond, the recipient would be able to challenge that termination through administrative review. The combination of allowing the caseworker to determine a "reasonable time" in each case, and the provision of a separate notice of termination together, will adequately address the concerns of the parties.

D. Notice Relief.

The Plaintiff's Proposed Paragraph Nine, in which the Defendant does not concur, provides for notice of the resolution of this lawsuit to the class members as follows:

> 9. This Court has found that the adequate and timely notice procedures and the Medicaid policies and procedures in operation by the Defendant were inadequate under federal law. As relief, the Plaintiffs urge that this Court order these individuals notified of the inadequacies and give them the opportunity to request appropriate individual relief. The Defendant has agreed to provide individual

notice for persons who are in a period of ineligibility as of July, 1988 concerning: (1) the recalculation of their ineligibility period based upon the new standard of need, (2) when they would be eligible to reapply, (3) the circumstances under which a period of ineligibility may be shortened, and (4) of their rights, if any, to continuing Medicaid coverage.

Further, as the Court found the State's AFDC notice termination policies and Medicaid policies violative of federal law, Plaintiffs ask for class-wide notice relief through the mass mailing of notices as inserts in AFDC checks, food stamps, public service announcements, poster in county DFCS offices and other means to assure that actual notice is received by the class.

The Court is persuaded that some form of notice relief is required in this case. Notice relief in the instant suit will be ancillary to the Court's prospective injunctive relief, and therefore will not run counter to the Eleventh Amendment. *See Quern v. Jordan*, 440 U.S. 332, 346-49 (1979); *cf. Green v. Mansour*, 474 U.S. 64, 68-71 (1986). While the Commissioner already has changed several of its policies in this case, these changes have been as a result of this Court's Order which declared the prior practices illegal. Further, the instant Order provides for additional prospective injunctive relief. Therefore, this case falls under the rule of *Quern* rather than that of *Green*.

Given that the Court decides that some form of notice relief will be required, the parties can perhaps agree upon a form of notice that would be effective and yet not unduly burdensome for the Defendant. The burden on the Defendant is a factor to consider in granting notice

relief. *See Read v. Health and Human Services*, 774 F.2d 1270, 1277 (4th Cir. 1987) (denial of individual explanatory notices not an abuse of discretion, where mailing of notice to identifiable class members was supplemented by posted notice and publication); *see also Quern*, 440 U.S. at 349 (where Court noted that the State had not objected to the expense of the notice relief ordered by the district court).

It is unclear at this time whether still viable as an option is the suggestion by the parties, that the Defendant could notify all persons who were identified as being in a period of ineligibility in July, 1988. Accordingly, the Court requests that the parties confer on the issue of notice relief, and submit their proposals, together or separately, to the Court.

Collection of Overpayments

The Plaintiff has submitted Paragraph Ten on the issue of the Defendant's collection of overpayments:

> 10. Plaintiffs have also asked that this Court enjoin the Defendant from collecting overpayment as a result of receipt of a lump sum for clients who did not receive an adequate notice of termination when they reported the receipt of a lump sum.

The Defendant has stated no argument against the proposal in this paragraph, and the Court concludes that he has no objection to this paragraph. Accordingly, Paragraph Ten is ADOPTED: Defendant is hereby ENJOINED from collecting overpayment as a result of receipt of a lump sum for clients who did not receive an adequate

notice of termination when they reported the receipt of a lump sum.

E. Training.

The parties are in agreement as to Proposed Paragraph Eleven, which reads as follows:

> 11. The parties have agreed on a resolution of the training issue. Plaintiffs have requested a detailed training plan that will assure these policies and procedures set forth above are followed by the on-line caseworkers with day to day contact with clients. Defendant has agreed to provide such training on the lump sum issue using the materials submitted to the Court as Exhibit A to Brief of Defendant Ledbetter on Pending Relief Issues. Of course, whatever other substantive decisions are made by the Court will also be included in the manual materials and disseminated at training. Defendant has agreed to inform Plaintiffs of the next field staff training.

Paragraph Eleven is ADOPTED.

ACCORDINGLY, Defendant's Motion to Reconsider is GRANTED to the extent noted herein. Defendant is hereby ENJOINED and ORDERED to take the actions prescribed in this Order and to refrain from taking the actions proscribed in this Order. The parties are DIRECTED to confer and report back to the Court on the remaining issue of notice relief within twenty-five days from the date of this Order. Upon the receipt of the responses of the parties, the Clerk is DIRECTED to

resubmit this case to the Court for resolution of the remaining issue.

IT IS SO ORDERED, this 30th day of March, 1989.

/s/ Harold L. Murphy
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MARTA O. TURNER, IRENE EDWARDS, MARGIE RAY, and SHIRLEY EVANS, On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

JAMES G. LEDBETTER, In His Official Capacity As Commissioner Of The Georgia Department of Human Resources,

Defendant.

CIVIL ACTION NUMBER C86-199R

ORDER
(Filed June 24, 1987)

This case is before the Court on cross motions for summary judgment pursuant to Fed. R. Civ. P. 56. For the reasons set forth below, plaintiffs' motions for summary judgment will be granted in part. Defendants' motion for partial summary judgment will be denied.

BACKGROUND

Plaintiffs bring this civil action for declaratory and injunctive relief on behalf of themselves and others similarly situated who are beneficiaries of the Aid to Families with Dependent Children (AFDC) program in the State of Georgia. Plaintiffs are residents of Georgia, living with their dependant [sic] children.

The AFDC program provides cash assistance to children who have been deprived of the care and support of one of their parents through either death, continued absence, incapacity or unemployment. 42 U.S.C. § 606(a). AFDC is funded partly by the states and partly by the federal government. State programs must comply with federal law in order to receive federal funds. 42 U.S.C. §§ 601, 602(a). States may not impose eligibility requirements which exclude from coverage individuals who are eligible under federal statutes. *Carleson v. Remillard,* 406 U.S. 598 (1972).

Defendant Ledbetter is the Commissioner of the Georgia Department of Human Resources (DHR). Defendant is responsible for the state administration and operation of the AFDC program and for adopting and implementing AFDC policies, rules and procedures so as to comply with controlling federal statutes. Defendant is also responsible for the determining the eligibility of AFDC and Medicaid applicants and recipients.

Plaintiffs' complaint alleges a failure on the part of the defendant to comply with federal statutes controlling the administration and operation of the AFDC program. Plaintiffs' assert that:

1). Defendant has failed to provide AFDC recipients who receive lump sum income with adequate advance notice of the AFDC lump sum penalty and its adverse effect on eligibility for AFDC;

2). Defendant has failed to provide AFDC recipients with adequate and timely notice of termination of AFDC benefits due to a receipt of lump sum income; and,

3). Defendant has failed to follow Medicaid regulations and statutes regarding a receipt of lump sum income by failing to make a separate *ex parte* determination of Medicaid eligibility or to give adequate and timely notice of eligibility.

Plaintiffs argue that these failures by defendant are in violation of regulations promulgated under legislative authority, and that defendants failure to provide adequate and timely notice in these circumstances violates the 14th Amendment due process clause.[1] Plaintiffs premise jurisdiction for these claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3). Further, plaintiffs state that such claims are authorized under 42 U.S.C. § 1983 and declaratory and injunctive relief is available under 28 U.S.C. §§ 2201, 2202 and Fed. R. Civ. P. 57. On July 31, 1986, this Court granted plaintiffs' leave to proceed *in forma pauperis*. On March 19, 1987, this Court granted plaintiffs' motion for conditional class certification. The Court certified the class of plaintiffs as:

> all individuals in the State of Georgia who have been or will be otherwise eligible for AFDC benefits and Medicaid benefits who have been or will be found ineligible for AFDC benefits for a predetermined number of months as a consequence of receipt of lump sum income by a member of their AFDC household and who have been or will be found ineligible for Medicaid benefits using an improper standard and without a separate determination of Medicaid eligibility and who were not or will not be provided

---

[1] Because the Court finds that the defendant has violated the substantive law and relevant regulations it need not, and will not, reach the constitutional issues.

> with adequate advance written notice of the adverse effect of said lump sum income on their eligibility for AFDC and of the effect of lump sum income on Medicaid eligibility.

"Summary judgment is a lethal weapon, and courts must be mindful of its aims and targets and beware of overkill in its use." *Brunswick Corp. v. Vineberg*, 370 F.2d 605, 612 (5th Cir. 1967). Fed.R.Cir.P. 56(c) authorizes summary judgment when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." The party seeking summary judgment bears the burden of demonstrating that no dispute as to any material fact exists. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 26 L.Ed. 2d 142 (1970); *Bingham, Ltd. v. United States*, 724 F.2d 921, 924 (11th Cir. 1984). In assessing whether the movant has met this burden, the evidence and all factual inferences should be viewed in the light most favorable to the party opposing the motion. *See Bradbury v. Wainwright*, 718 F.2d 1538, 1543 (11th Cir. 1983). In deciding a motion for summary judgment, it is no part of the court's function to decide issues of genuine material fact but solely to determine whether there is such an issue to be tried. *See Anderson v. Liberty Lobby, Inc.*, ___ U.S. ___, 106 S.Ct. 2505, 91 L.Ed. 2d 202 (1986); *Warrior Tombigbee Transportation Co. v. M/V Nan Fung*, 695 F.2d 1194, 1196 (11th Cir. 1983). A District Court "can only grant summary judgment 'if *everything* in the record . . . demonstrates that no genuine issue of material fact exists.' " *Tippens v. Celotex Corp.*, 805 F.2d 949, 952 (11th Cir. 1986), quoting *Keiser v. Coliseum Properties, Inc.*, 614 F.2d 406, 410 (5th Cir. 1980) (emphasis in original).

THE NOTICE ISSUE

1. Lump Sum Notice from 1981 through October 1986.

The lump sum[2] policy at issue in this case stems from the Omnibus Budget Reconciliation Act of 1981, which amended the Social Security Act in several areas. 1981 U.S. Code Cong. Ad. News (95 Stat.) 357, 845. Prior to the 1981 Act, when an AFDC beneficiary received a lump sum he or she was deemed ineligible for the month of receipt, but could reapply for benefits as soon as the sum was exhausted. The 1981 amendment was passed because Congress felt that this practice created a disincentive to use lump sum income for ordinary living expenses. The amendment to the Social Security Act required states to compel AFDC recipients to budget their lump sum income. The statute reads in part:

> A state plan for aid and services to needy families with children must –
>
> (17) provide that if a child or relative applying for or receiving aid to families with dependent children, or any other person whose need the State considers when determining the income of a family, receives in any month an amount of earned or unearned income which,

---

[2] The defendant defines "lump sum", in part, as "A non-recurring payment that, with other countable income for that month exceeds the Standard of Need for the grant group size. This may be cumulative from such sources as RSDI, Child Support, Workers' Compensation . . . It may be a one time occurrence such as an insurance payment, death benefits or a court settlement . . . Lump sums are usually unearned income." State Public Assistance Manual, page 8L of IV-110(rev. 3/86).

> together with all other income for that month not excluded under paragraph (8), exceeds the standard of need applicable to the family of which he is a member –
>
> > (A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all other income received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family, and (B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A); . . .

42 U.S.C. § 602(a)(17). In response to the 1981 amendment, defendant undertook the actions complained of in this case. Between 1981 and October 1986 defendant provided no written information to AFDC recipients or applicants in Georgia explaining that the change in the lump sum rule would render a recipient who received a lump sum ineligible for AFDC for a fixed period of time and that the recipient must live off the lump sum for that period, regardless of how quickly the sum was exhausted.

Plaintiffs argue that this lack of notice violates federal regulations, 45 C.F.R. §§ 206.10(a)(2)(i), 206.10(a)(7), and the due process clause of the Fourteenth Amendment. The regulations read in relevant part:

> (2)(i) Applicants shall be informed about the eligibility requirements and their rights and

> obligations under the program. Under this requirement individuals are given information *in written form, and orally as appropriate,* about coverage, conditions or eligibility, scope of the program, and related services available, and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, understandable terms are publicized and available in quantity.
>
> (a)(7) In cases of proposed action to terminate, discontinue, suspend or reduce assistance, the agency shall give timely and adequate notice . . .

(emphasis added). Because the Court concludes that the utter lack of written notice in the period from 1981 through October 1986 violates the federal regulations, the court need not reach the constitutional issue raised by plaintiffs. There can be no dispute that the lack of written notice prior to October 1986 violated the regulations above and resulted in an unfair application of the lump sum rule. The prior rule regarding lump sum income encouraged recipients to "spend down" any amounts received in the month of receipt so as to retain eligibility. Without being properly informed of the change in the rule it would be unlikely, if not impossible, for AFDC recipients to budget lump sum income according to the strict requirements of the statute. "If the federal notice regulation is to serve any meaningful function at all . . . surely it must require effective written notice of a policy which can have such drastic consequences on the recipient." *Slaughter v. Levine,* 598 F.Supp. 1035, 1050 (D.Minn. 1984) *cert. granted sub nom, Gardebring v. Jenkins,* No. 86-978 (Feb. 23, 1987).

2. Lump Sum Notice Since October 1986.

In October of 1986, defendant revised the AFDC application and provided the following explanation of the lump sum rule to future *applicants* only:

> I understand that any lump sum or "windfall" payment that any person in my grant group receives must be budgeted, along with any other income that we might have, to determine our current and continued eligibility for AFDC. I understand that a lump sum payment could make our grant group ineligible for AFDC for one or more months and that I should plan to use the lump sum for living expenses for that period of time.

Defendant has never provided caseworkers with written directions, transmittals or guidelines on what information they are to give AFDC recipients who report the receipt of lump sum income other than the definitions of lump sum and defendant's policy set out in the Public Assistance Manual. When an AFDC recipient reports the receipt of lump sum income, the defendant sends out either a handwritten or computer-generated notice of termination of benefits.

Plaintiffs argue that this level of notice, and the specific notice given, still do not satisfy the requirements of the regulations or of the due process clause. Plaintiffs state that the named plaintiff's did not receive any advance written notice of the rule requiring that they budget lump sum income, and that when they reported lump sum income they were not given appropriate notice of the effect such income would have on their benefits and the budgeting requirements imposed by the lump sum rule. The Court agrees.

No named plaintiffs were informed in writing of the change in the lump sum policy. Those who reported the receipt of lump sum income did not receive timely or adequate notice of the impact of the new lump sum policy.

This Court concurs in the finding of the Court in *Slaughter v. Levine*, 598 F.Supp. 1035 (D.Minn. 1984) *aff'd*, 801 F.2d 288 (8th Cir. 1986) *cert. granted sub nom., Gardebring v. Jenkins*, No. 86-978 (February 23, 1987). On facts similar to those before this Court, the Eighth Circuit concluded that "[w]ithout advance notice, an AFDC beneficiary is unlikely to budget a lump sum according to the new rule's rigid formula. AFDC recipients live at a subsistence level; they are likely to have unpaid bills and basic needs not entirely met by AFDC. Thus, an AFDC recipient faces considerable pressure to make use of a lump sum as soon as it received." 801 F.2d at 295.

As the circuit court noted, the operation of the lump sum rule, where a family exhausts its lump sum before its ineligibility period expires, may leave a family with insufficient resources for basic necessities. The imposition of this condition on a family that was not provided with advance notice of the new lump sum rule would be, as the circuit court found, "Kafkaesque." 801 F.2d at 296.

Specifically, although the language of 45 C.F.R. § 206.10(a)(2)(i) refers to the necessity to inform applicants about the eligibility requirements and rights and obligations under AFDC, it is only under a cramped reading that this requirement would only apply to new applicants and not to those currently receiving AFDC benefits.

Furthermore, the written notice provided after recipients reported the receipt of lump sum income was inadequate. Although questions of fact remain as to whether the timing of the notice fulfilled the requirements of the regulations, the Court has no trouble concluding that the content of the notice is insufficient. Plaintiffs who reported lump sum income received a computer-generated written notice stating that AFDC benefits would be terminated because:

> Reason and Regulation for Action: Your income exceeds the payment standard in Georgia. Regulation: All countable income is budgeted against the state payment amount. Section: IV.

Under the federal regulations, adequate notice is defined as follows:

> B. "Adequate" means a *written* notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individuals right to request an evidentiary hearing (if provided) and a State agency hearing, and the circumstances under which assistance is continued if a hearing is requested.

42 C.F.R. § 205.10(a)(4)(i)(B)(emphasis added). The notice above does not approach adequacy as defined by the regulation. It is inadequate in that it fails to meaningfully inform the recipient of the reasons for the termination of AFDC or the impact that termination is likely to have on the recipient's future eligibility. The Court thus concludes that the defendant violated the regulations in failing to provide adequate written notice to all recipients of AFDC of the change in the program's lump sum policy, and

violated the regulation in failing to provide adequate written notice to recipients of AFDC who reported lump sum income.[3]

TERMINATION OF MEDICAID BENEFITS

A recipient of AFDC is considered "categorically needy" and automatically qualifies for Medicaid. 42 U.S.C.A. 1396(a)(10)(A). However, those who are not categorically needy may be considered "medically needy." The medically needy are those who are otherwise eligible for medicaid but whose income and resources are above the limits prescribed for the categorically needy but within those set under the Medicaid state plan.

Plaintiffs complain that defendant improperly automatically terminates Medicaid benefits to AFDC recipients whose receipt of lump sum income made them ineligible for AFDC. Named plaintiffs were informed, in the same form terminating AFDC due to receipt of lump sum income, that Medicaid benefits were to be terminated. Furthermore, plaintiffs later received additional notification that Medicaid benefits would be terminated within ten days unless additional information was provided to defendant. The notices, and this system of termination from Medicaid, are both unlawful.

---

[3] The defendant's submission of occasional hand-written notes by caseworkers, more fully setting out the lump sum rule, are incidental and do not significantly mitigate the systemic failing to provide appropriate notice to AFDC recipients of the impact of the lump sum rule.

Plaintiffs were notified that Medicaid benefits were to be terminated by the placement of an "X" beside "Medical Assistance Discontinued" on the form notifying them that they were losing AFDC benefits. Following that, a separate Medicaid notification form was sent requesting recipients to submit information to determine eligibility under Medicaid.

Federal Medicaid regulations require that any action that will affect a recipients Medicaid claim be made with notice. 42 C.F.R. § 431.206. That notice must include:

> (a) A statement of what action the agency intends to take;
>
> (b) The reasons for the intended action;
>
> (c) The specific regulations that support, or the change in Federal or State law that requires, the action;
>
> (d) An explanation of . . . The individual's right to request an evidentiary hearing . . . a State agency hearing; . . . and
>
> (e) An explanation of the circumstances under which Medicaid is continued if a hearing is requested.

42 C.F.R. § 431.210. The notices provided to plaintiffs do not satisfy these requirements. They are insufficient, misleading and inappropriate. The notice regulations further the intent of Congress that States "provide such safeguards as may be necessary to assure that eligibility for care and services" under Medicaid "will be determined . . . in a manner consistent with simplicity of administration and the best interests of the recipients." 42

U.S.C.A. § 1996(a)(17). Here the best interests of the recipients have been sacrificed for apparent simplicitly of administration.

The purpose of the revised lump sum rule is to ensure that AFDC recipients will budget any lump sums received as though they were continuing to receive AFDC. Thus, the lump sums at issue here do not constitute any appreciable change in the financial status of recipients. For a time they are to use their own monies for necessities otherwise provided by AFDC. All other things being unchanged, when that lump sum is exhausted, they would presumably be again eligible for AFDC. The State, which has files indicating recipients' budgets, resources and income, is fully capable of making an initial *ex parte* finding as to the continued eligibility of plaintiffs for Medicaid. It would only be rational for the State to assume continued eligibility, absent other factors. That the State effectively assumes *in*eligibility, and places the burden on recipients to show some continued ground for eligibility within approximately ten days, is unfair and irrational.

The regulations require that the State "[c]ontinue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible . . . " 42 C.F.R. § 435.945(b). The system by which recipient [sic] are given around ten days to respond to an *ex parte* determination, and then automatically terminated from Medicaid cannot be considered a *finding* of ineligibility. It is an administrative convenience that may well work a manifest injustice. The Court thus finds that defendant has improperly applied

federal Medicaid regulations relating to lump sum policies, eligibility requirements and discontinuance of Medicaid eligibility.

REMEDIES

Plaintiffs have sought declaratory and injunctive relief for the actions of the defendant. While the Court finds defendant's actions in violation of the substantive law and relevant regulations, the Court is hesitant at this juncture to determine the appropriate relief. The Court is sensitive to the State's concerns regarding the implementation of notice provisions and the resolution of past errors where records may not be available. Furthermore, having certified the class of plaintiffs conditionally, the Court finds it inappropriate to act for the benefit of the class at this time. Rather, the Court will hold a hearing with the parties on the remedies for the failings the Court has found with the current administration of the AFDC and Medicaid programs.

ACCORDINGLY, plaintiffs' motion for summary judgment is GRANTED in part, defendant's motion for summary judgment is DENIED. The parties are directed to schedule a hearing with the Court as soon as practicable.

IT IS SO ORDERED, this the 24th day of June, 1987.

Harold L. Murphy
UNITED STATES DISTRICT JUDGE

(3)

No. 90-644

FILED
NOV 19 1990
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1990

JAMES G. LEDBETTER, COMMISSIONER,
GEORGIA DEPARTMENT OF HUMAN RESOURCES,

Petitioner,

v.

MARTA O. TURNER, et al.,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the eleventh circuit correctly held that the petitioner cannot violate federal regulations that require adequate and timely notice of termination of AFDC and subsequently charge respondents with overpayments.

2. Whether the eleventh circuit correctly held that the district court's injunction against the recoupment of AFDC benefits paid to respondents does not violate the eleventh amendment.

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BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Respondents, MARTA TURNER and the class of AFDC recipients she represents, respectfully ask this Court to deny the Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit. That opinion is reported as *Turner v. Ledbetter*, 906 F.2d 606 (11th Cir. 1990).

REGULATORY PROVISIONS

In addition to the statutes cited by petitioner, respondents refer the Court to the following federal regulations.

45 C.F.R. § 205.10(a)(4)(i)(A), (B):

> In cases of intended action to discontinue, terminate, suspend or reduce assistance . . . (i) The State or local agency shall give timely and adequate notice, . . . (A) "Timely" means that the notice is mailed at least 10 days before the date of the action, that is, the date upon which the action would become effective; (B) "Adequate" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing. . . .

45 C.F.R. § 205.10(a)(6)(i):

> If the recipient requests a hearing within the timely notice period: (i) Assistance shall not be suspended, reduced discontinued or terminated (but is subject to recovery by the agency if its

action is sustained), until a decision is rendered after a hearing. . . .

45 C.F.R. § 206.10(a)(2)(i):

Applicants shall be informed about the eligibility requirements and their rights and obligations under the program. Under this requirement individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, and related services available, and the rights and responsibilities of applicants for and recipients of assistance.

STATEMENT OF THE CASE

This is an action brought by current and former recipients of Aid to Families with Dependent Children (AFDC) challenging the State of Georgia's implementation of the federal lump sum penalty provision of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357, 845 (1981). Under the lump sum penalty the state divides the amount of any lump sum of money received by an AFDC recipient by the state standard of need, and disqualifies the AFDC recipient for the resulting number of months. 42 U.S.C. § 602(a)(17), 45 C.F.R. § 233.20 (a)(3)(ii)(F). Respondents filed suit on three issues:

1. Whether they were entitled to advance written notice of the lump sum penalty. 45 C.F.R. § 206.10(a)(2)(i);

2. Whether the individual written notices of termination received by respondents after they reported the receipt of a lump sum were adequate pursuant to 45 C.F.R.

§ 205.10(a)(4)(i)(A),(B) or the Fourteenth Amendment to the United States Constitution; and

3. Whether petitioner's practice of automatically terminating Medicaid assistance when AFDC was terminated due to the receipt of a lump sum was proper pursuant to 42 U.S.C. § 1396a(a)(10) and 42 C.F.R. § 435.916(c).

The first issue was ultimately determined adversely to the respondents after this Court's ruling in *Gardebring v. Jenkins*, 485 U.S. 415 (1988). This Court held that AFDC recipients are not entitled to an advance written mass notice of the lump sum penalty. *See also, Atkins v. Parker*, 472 U.S. 115 (1985).

On the remaining two issues the district court ruled for the respondents. The district court held that the individual notices sent to the respondents terminating their AFDC were inadequate under the regulations requiring adequate and timely notice of termination of AFDC benefits at 45 C.F.R. § 205.10(a)(4)(i)(A), (B). "The Court has already decided that the computer generated notices are inadequate, confusing, and sometimes misleading." District court's order of March 30, 1989, pg. 17a Petition for Certiorari. The district court further decided under *Schweiker v. Gray Panthers*, 453 U.S. 34 (1981), that the petitioner's Medicaid termination policies were illegal and ordered the state's policy and practice to conform to the federal statute and regulations. 42 U.S.C. § 1396a(a)(10); 42 C.F.R. § 435.916(c). The petitioner did not appeal the district court's rulings on these last two issues.

As relief the district court ordered the petitioner to change his policies regarding individual notice at the termination of AFDC. The individual notices must show the calculations of the AFDC recipient's lump sum penalty, explain why the recipient was terminated, how long she will be disqualified, and advise her when she can reapply for benefits. The district court further ordered the petitioner to change the state Medicaid termination policy manual to assure that a separate Medicaid eligibility determination is made for recipients when AFDC is terminated, as required by the Medicaid regulations. The district court also required notice of the lawsuit to be sent to class members pursuant to *Quern v. Jordan*, 440 U.S. 332 (1979). The district court also ordered that the petitioner train caseworkers to assure that the new procedures were properly implemented.

Finally, the district court held that the petitioner's failure to provide adequate notices as required by the federal AFDC regulations meant that the AFDC terminations were not legal and proper. The district court therefore held that the petitioner had not lawfully terminated AFDC and Medicaid benefits and no overpayments had occurred. As a result the petitioner was barred prospectively from reducing future AFDC grants to collect the alleged overpayments paid to respondents. This single relief question is the only issue the petitioner appealed to the eleventh circuit and the only issue pending before this Court. The district court specifically recognized that the eleventh amendment barred the court from ordering illegally terminated benefits returned to respondents or from requiring the petitioner to return the alleged overpayments wrongfully collected.

The eleventh circuit, in affirming the district court, held that the relief ordered by the district court was appropriate. The court held that because there was no proper termination of AFDC benefits, the respondents were not overpaid and *do not owe any money to the state.* The eleventh circuit decided that while the eleventh amendment bars the federal courts from awarding compensatory damages from the state treasury, the amendment does not bar prospective injunctive relief which requires state officials to conform their policy to federal law as in this case.

REASONS FOR DENYING THE WRIT

I. THIS IS NOT A MATTER OF SPECIAL IMPORTANCE FOR THE UNITED STATES SUPREME COURT TO DECIDE.

A. The One Remaining Relief Issue In This Case Is Not A Matter That Requires The Time And Resources Of The Supreme Court

After years of discovery to determine class members, the only person that petitioner ever identified with any substantial alleged overpayment was the named plaintiff, Marta Turner. Ms. Turner continued to receive benefits after the state's attempted termination of her benefits because she knew to appeal within ten days of the receipt of her notice of termination. Her total alleged overpayment was $1,152. While this is a substantial amount for Ms. Turner, it does not seem to be a matter that would require the time and resources of the United States Supreme Court.

AFDC regulations provide that if a recipient requests a timely hearing within ten days of receiving a termination notice, her AFDC benefits cannot be terminated. "Assistance shall not be suspended, reduced, discontinued or terminated (but is subject to recovery by the agency *if its action is sustained*) until a decision is rendered after a hearing, . . . " 45 C.F.R. § 205.10(a)(6)(i) (emphasis added).

In Ms. Turner's case, the agency action was not sustained by either court that considered it. The petitioner's termination procedures were found inadequate and unlawful and the petitioner was ordered to correct those procedures. Significantly, the petitioner did not appeal any of the substantive rulings requiring the changes in his AFDC and Medicaid notice procedures.

Petitioner argues that under the regulations he is required to collect all overpayments from AFDC recipients. 42 U.S.C. § 602(a)(22); 45 C.F.R. § 233.20(a)(13). However, both the district court and the eleventh circuit have determined that Ms. Turner did not receive an overpayment. The regulations do not define the money respondent received during her appeal as an overpayment because the petitioner's actions were not sustained. His policies were declared unlawful and he did not appeal that decision to the eleventh circuit or to this Court.

B. No Split Of Authority Exists Among The Circuits Regarding The Relief To Which An AFDC Recipient Is Entitled If The State Does Not Provide Adequate And Timely Notice As Required By Federal Regulations

The Supreme Court rules state that the Court will take cases upon Petition for Certiorari only when there

are special and important reasons for an issue to be decided by the United States Supreme Court. One of those special and important reasons is when a conflict exists between two United States circuit courts of appeal. Sup. Ct. R. 10.1.(a), *National Ass'n. of Greeting Card Pub. v. U.S. Postal Service*, 462 U.S. 810 (1983).

Petitioner argues that a split of authorities exists among the circuits regarding the effect of a court's finding that the state's notice procedures are inadequate. However, the petitioner does not cite to any case that has held the state can violate the individual notice regulations at 45 C.F.R. § 205.10(a)(4)(i)(A) and (B) and still effectively terminate AFDC.

Petitioner relies on one case that he argues shows a conflict "in principle" on the issue of relief. *Foggs v. Block*, 722 F.2d 933 (1st Cir. 1983), *rev'd sub nom. Atkins v. Parker*, 472 U.S. 115 (1985). Petitioner asserts that *Foggs* is in conflict with the line of cases from *Goldberg v. Kelly*, 397 U.S. 254 (1970), *Kimble v. Solomon*, 599 F.2d 599 (4th Cir. 1979), *cert. denied sub nom. Buck v. Kimble*, 444 U.S. 950 (1979) to *Turner, supra*. *Foggs*, later in this Court *Atkins*, did not consider the rights of an individual recipient to receive notice on the termination of her benefits. In *Foggs*, a food stamp case, the first circuit determined the validity of a mass notice that the state sent after a change in food stamp legislation. *See*, 7 C.F.R. § 273.13(b)(1). The requirement to provide mass notices to applicants regarding information about the program or after a legislative change is clearly distinguishable from the obligation of the state to provide individual notices of termination before the state can discontinue an individual recipient's benefits.

On petition for certiorari this Court recognized the distinction between these two different types of notices. This Court looked at the notice regulations drawing a clear "distinction between the requirement of notice in advance of an 'adverse action' based on the particular facts of an individual case, on the one hand, and the absence of any requirement of individual notice of a 'mass change,' on the other." *Atkins*, 472 U.S. at 125. In *Atkins* the Supreme Court decided that the mass notice of legislative changes in the food stamp program was not required. In contrast, the individual notice requirements that are at issue in *Turner*, were upheld by the district court and the eleventh circuit and were not appealed to this Court by the petitioner

The circuit courts have consistently held, since this Court's ruling in *Goldberg v. Kelly*, 397 U.S. 254 (1970), that due process requires an adequate and timely notice prior to the termination of AFDC. Moreover, the courts have consistently held that an improper or illegal individual notice will bar an attempted termination of benefits, even though a substantive rule might have been used against the recipient had proper notice been provided. *Buckhanon v. Percy*, 708 F.2d 1209 (7th Cir. 1983), *cert. denied*, 465 U.S. 1025 (1984); *Kimble v. Solomon*, 599 F.2d 599 (4th Cir. 1979), *cert. denied sub nom. Buck v. Kimble*, 444 U.S. 950 (1979); *Caldwell v. Wallace*, 755 F.2d 870 (11th Cir. 1985). Otherwise, the guarantees of the due process clause of the Constitution and the notice statutes and regulations are illusory. Thus, there is no conflict between the circuits on the issue presented by this case.

II. THE ELEVENTH CIRCUIT COURT OF APPEALS CORRECTLY HELD THAT THE PETITIONER COULD NOT VIOLATE FEDERAL REGULATIONS WHICH REQUIRE ADEQUATE AND TIMELY NOTICE OF TERMINATION OF AFDC AND SUBSEQUENTLY CHARGE RESPONDENTS WITH OVERPAYMENTS.

The eleventh circuit, in affirming the district court, held that because of the ineffective notice the respondents did not receive an overpayment. To allow the state to collect these alleged overpayments "as the state urges, would frustrate the federal regulations by allowing the state to violate the federal regulations requirement of adequate notice and at the same time claim to have legally terminated AFDC recipients." *Turner*, 906 F.2d at 609.

This issue of relief is governed by this Court's decision in *Goldberg v. Kelly*, 397 U.S. 254 (1970). In *Goldberg* no one disputed the validity of the underlying regulation. The state of New York asserted that the AFDC recipients had violated specific AFDC regulations. The state alleged that one of the plaintiffs had concealed her employment, a clear violation of the AFDC regulations. Another plaintiff in *Goldberg* was accused of not reporting that her husband lived with her and had income, also a clear violation of the AFDC regulations. Nevertheless, the court held "the issue is not whether a specific termination was proper, but whether the procedures used were justifiable." *Kelly v. Wyman*, 294 F.Supp. 893, 900 (S.D.N.Y. 1968), *aff'd sub nom. Goldberg v. Kelly*, 397 U.S. 254 (1970). This Court held that to terminate benefits the state must provide the recipients with adequate and timely notice. These notice requirements were later incorporated into

statute and regulations requiring and defining adequate and timely notice. 42 U.S.C. § 602(a)(4), 45 C.F.R. § 205.10(a)(4)(i)(A),(B).

A termination notice in a lump sum penalty case is critically important because the recipient is expected to plan her family's budget for the next few months based on the notice. She must know how long her penalty period will last for her to plan to use her lump sum for her living expenses. This Court held in *Gardebring v. Jenkins, supra,* that advance written notice of the rule itself was not required. This makes the individual notice to the recipient all the more important.

The only case that petitioner cites for his proposition that the state can fail to provide adequate notice and still have lawfully terminated benefits is the first circuit decision in *Foggs v. Block,* 722 F.2d 933 (1st Cir. 1983), *rev'd on other grounds, sub nom. Atkins v. Parker,* 472 U.S. 115 (1985). As discussed above, *Foggs* considered the adequacy of a mass change notice regulation, not the individual notice to food stamp recipients at the termination of their benefits. The Supreme Court in *Atkins* eventually held that the mass notice was not required under the food stamp regulations. "This case, however, does not concern the procedural fairness of individual eligibility determinations. Rather, it involves a large legislatively mandated substantive change in the scope of the entire program." *Atkins,* 472 U.S. at 129. The procedural fairness of individual eligibility determinations is exactly what *Turner* involved. The substantive legal issue was decided against the recipients in *Atkins* and therefore the issue of relief was not decided. *Atkins* is not precedent or authority for the type of relief ordered in *Turner,* and presents

no conflict of authority upon which to base this Petition for Certiorari. The petitioner points to no case that holds that the state can ignore the individual notice regulations with impunity. Rather, the cases consistently hold that an ineffective notice will bar the termination of benefits, even though a substantive rule might have otherwise been used against the recipient.

Likewise, in *Gardebring v. Jenkins, supra,* the issue was not individual notice at the termination of benefits as in *Turner.* The issue in *Gardebring* was whether all AFDC applicants or recipients were entitled to advance written notice of a mass change in the AFDC regulations pursuant to 45 C.F.R. § 206.10(a)(2)(i). That very broad regulation raised in *Gardebring* says that "[a]pplicants shall be informed about the eligibility requirements and their rights and obligations under the program." The Supreme Court determined that 45 C.F.R. § 206.10(a)(2)(i) did not require that recipients be advised in advance about the lump sum penalty.

In comparison, the notice regulations the courts found petitioner had violated in *Turner* were clear and specific requirements of individual notice.

> In cases of intended action to discontinue, terminate, suspend or reduce assistance . . . (i) The State or local agency shall give timely and adequate notice, . . . (A) "Timely" means that the notice is mailed at least 10 days before the date of the action, that is, the date upon which the action would become effective; (B) "Adequate" means a written notice that includes a statement of what action the agency intends to take, the

> reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing. . . .

45 C.F.R. § 205.10(a)(4)(i)(A), (B).

Both *Atkins* and *Gardebring* considered the requirements of mass change notice regulations. In both cases this court found the mass notices were not required. Neither case is authority for the substantive issues nor the relief ordered in *Turner*.

Nor is *Schweiker v. Hansen*, 450 U.S. 785 (1981), in any way relevant to this case. This case was not brought before the district court on the issue of the individual error of a caseworker as in *Schweiker*. *Schweiker* involved one caseworker giving out erroneous information. The Court held the government was not estopped from applying the Social Security regulations because of the erroneous advice of a government worker. In *Turner* the entire state policy was found illegal. The policy manuals had to be rewritten and training for caseworkers on the new procedures was ordered.

Petitioner implies that Ms. Turner, as Ms. A, received more than her entitlement of public benefits because she appealed and had her benefits continued during her appeal. Compared to the other class members, Ms. Bs, whose benefits were terminated, Ms. Turner was indeed lucky that she knew to appeal to continue her AFDC. However, she was not receiving anything to which she was not entitled. Petitioner's admitted illegal policies caused grievous harm to the families he is entrusted to assist. Because these AFDC recipients were not given adequate notice telling them they would be cut off AFDC,

they used the lump sum money they received to meet the basic needs for themselves and their families. In most cases, AFDC families learned they would not receive AFDC only when their next month's check did not arrive. The respondent class had no money and no medical assistance. Petitioner's illegal policies placed the most vulnerable in our society, poor mothers and children, in dire life-threatening circumstances. Now he asserts that because one family did not suffer to the same extent as the others because of his policies, there is an injustice. The injustice would occur if petitioner were now allowed to take action against these recipients and terminate or reduce their AFDC checks to recoup these alleged overpayments, despite the state's violation of the adequate and timely notice regulations.

III. THE ELEVENTH CIRCUIT COURT OF APPEALS CORRECTLY HELD THAT THE DISTRICT COURT'S INJUNCTION AGAINST THE RECOUPMENT OF AFDC PAID TO RESPONDENTS DOES NOT VIOLATE THE ELEVENTH AMENDMENT

The petitioner here seeks to expand the eleventh amendment beyond anything this Court has previously held. The petitioner argues that although his policies were held illegal he can collect these monies from the respondents because to prohibit him from doing so would affect the public fisc and is therefore barred by the eleventh amendment.

In his order of March 30, 1988, the district court judge enjoined the petitioner from recouping money from respondents. The eleventh circuit affirmed this action as

prospective injunctive relief which may have had an ancillary effect on the state treasury. Such an ancillary effect is allowed to require state officials to shape their official conduct to the mandate of a court decree.

Edelman v. Jordan, 415 U.S. 651 (1974), holds that the eleventh amendment prohibits the federal courts from ordering the "*payment of state funds*, not as a necessary consequence of compliance in the future with a substantive federal question determination, but as a form of compensation . . . measured in terms of a monetary loss resulting from a past breach of a legal duty on the part of the defendant state officials." 415 U.S. at 668. (emphasis added)

In *Turner* there was no order for the *payment of state funds*. No one has ordered the state to pay out any money to the respondents. Petitioner has simply been ordered not to reduce future AFDC benefits because the court found, and petitioner did not appeal, that he had not given respondents proper termination notices.

The district court recognized the restraints of *Edelman* and the Supreme Court's interpretations of the eleventh amendment. The court, mindful of *Edelman*, did not order petitioner to pay back benefits to any of the class members monies that they lost as a result of the illegal termination of their AFDC benefits. Rather, the court strictly tailored an order that prohibited the petitioner from taking future action to recover the AFDC overpayments charged to class members by the petitioner. The district court's injunction was an order for future compliance with the district court's determination that the petitioner

had not properly terminated benefits. Accordingly, the eleventh amendment is not implicated in *Turner*.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit in *Turner v. Ledbetter* should be denied.

Respectfully submitted,

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In The

Supreme Court of the United States

October Term, 1990

JAMES G. LEDBETTER, COMMISSIONER,
GEORGIA DEPARTMENT OF HUMAN RESOURCES,

Petitioner,

v.

MARTA O. TURNER, ET AL.,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

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v.

MARTA O. TURNER, ET AL.,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

REPLY BRIEF FOR THE PETITIONER

Petitioner responds to two factual contentions raised in Respondents' Brief In Opposition. Respondents allege that the named Plaintiff Marta Turner is the only class member in this case with an overpayment, making the amount in controversy only $1,152. (Brief in Opp., pp.5, 13). Respondents' assertion is clearly incorrect. The evidence in this case is undisputed that most lump sum recipients would have some overpayment. In this regard, the head of the Aid To Families With Dependent Children

(AFDC) program in Georgia testified in response to counsel for Respondent's cross-examination as follows:

> Q. Since the people who receive a lump sum are disqualified in the month of the receipt and they have ten days also to report that, isn't it true that probably they're going to be penalized with an – or have an overpayment? Isn't it true that most lump sum recipients are going to have an overpayment?
>
> A. Yes. That's true.

Deposition of Mary Jane Burns at 25, submitted with Respondents' Motion for Summary Judgment. R.5-26-1.

The record also contains evidence submitted by the Respondents of class members other than Marta Turner who have overpayments. In Plaintiffs' Statement of Undisputed Material Facts In Support of Plaintiffs' Motion for Summary Judgment, ¶ 39 at R.5-26-9 states that Bonnie Allgood's AFDC was continued pending appeal and ¶ 51 at R.5-26-11 states that Elizabeth Brown was charged with an overpayment. In sum, the record does not support Respondents' statement that no class member other than Marta Turner has an overpayment; rather, the evidence is directly to the contrary.

The record further shows that it would have cost in excess of $3 million for the State to manually search case files during the litigation to find all lump sum recipients. Affidavit of Martha Chambers, Exhibit C to Brief of Defendant on Pending Relief Issues. R.8-36-105 – 106. The trial court did not order such relief and such a search was never undertaken. For this reason, the record does not contain an exact number of overpayments, nor does it

contain an exact number of class members. Nevertheless, it is clear that the plaintiffs requested in their complaint class relief on the overpayments issue, as well as all other issues, and obtained classwide relief. Pet. App. 14a, 29a-29a. Estimates have now been made of the total of overpayments in Georgia based upon the responses of AFDC recipients to the notices ordered by the trial court, Pet. App. 15a; however, these estimates were made after the record was sent to the Court of Appeals.

Respondents also suggest that they received no notice of termination of their benefits. Respondents state "that in most cases AFDC families learned that they would not receive AFDC only when their next month's check did not arrive." Brief in Opp., p.13. Although the trial court clearly found problems with the notices, the problems were not concerning whether notices were sent at all or whether notices were timely. The sole notice issue resolved by the trial court addressed the adequacy of the notices. Pet. App. 40a. Therefore, the Respondents' implication that no notice was sent is erroneous.

In conclusion, Petitioner respectfully reaffirms its request that this Court issue a writ of certiorari to review

the decision of the Eleventh Circuit Court of Appeals in this matter.

Respectfully submitted,

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No. 90-644

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In the Supreme Court of the United States

OCTOBER TERM, 1990

JAMES G. LEDBETTER, COMMISSIONER,
GEORGIA DEPARTMENT OF HUMAN RESOURCES,
PETITIONER

v.

MARTA O. TURNER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

Respondents are Georgia residents who received lump-sum payments that rendered them temporarily ineligible for benefits under the Aid to Families with Dependent Children (AFDC) program. The district court held that notices of termination issued by the Georgia Department of Human Resources were inadequate, and petitioner did not appeal that ruling. The questions presented are:

1. Whether, as a result of the inadequate notices, respondents are entitled to retain AFDC benefits in excess of those authorized by Congress.

2. Whether the district court's order enjoining petitioner from recouping the excess benefits violates the Eleventh Amendment.

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In the Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-644

JAMES G. LEDBETTER, COMMISSIONER,
GEORGIA DEPARTMENT OF HUMAN RESOURCES,
PETITIONER

v.

MARTA O. TURNER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States in this case.

STATEMENT

1. The Aid to Families with Dependent Children (AFDC) program provides financial aid to needy children and to the parents or relatives with whom they are living. See 42 U.S.C. 601 *et seq.*; *Shea* v. *Vialpando*, 416 U.S. 251, 253 (1974). States that provide such assistance are partially reimbursed by the federal government.[1] The States must administer

[1] The federal government pays a share of the cost of AFDC benefits under a formula that takes into account a State's per capita income relative to national per capita income. The fed-

the AFDC program in conformity with applicable federal statutes and regulations.

Congress has required the States' AFDC plans to provide for the prompt correction of payment errors, including both overpayments and underpayments. See 42 U.S.C. 602(a)(22). If the recipient of an overpayment is still receiving AFDC benefits when the overpayment is discovered, recovery is made by reducing future AFDC benefits to not less than "90 percent of the amount payable under the State plan to a family of the same composition with no other income." 42 U.S.C. 602(a)(22)(A). In Georgia, this rate is set by the State at 95% where the overpayment is due to a government error; in other words, the rate of recovery in such cases is limited to 5% of the maximum monthly AFDC payment. See Pet. 23 n.6.

A state agency may not terminate AFDC benefits without providing the recipients with pre-termination notice and an opportunity to be heard. *Goldberg* v. *Kelly*, 397 U.S. 254 (1970). Federal regulations provide that an action "intended * * * to discontinue, terminate, suspend or reduce assistance" must be preceded by "timely and adequate notice." 45 C.F.R. 205.10(a)(4)(i). The regulations further provide:

> (A) "Timely" means that the notice is mailed at least 10 days before the date of action, that

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eral matching rate for AFDC benefits currently ranges from 50% to 77.5%. In addition, the federal government pays 50% of AFDC administration and training costs, 75% of the cost of a fraud control program, 90% of the cost of a mechanized claims-processing and information-retrieval system, and 100% of the cost of verifying immigration status. See 42 U.S.C. 603, 1318, 1396d(B).

> is, the date upon which the action would become effective;
>
> (B) "Adequate" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, the circumstances under which assistance is continued if a hearing is requested, and if the agency action is upheld, that such assistance must be repaid.

Ibid.

2. a. Prior to 1981, an AFDC household that received a lump-sum payment (such as an inheritance or lottery winnings) was ineligible for AFDC benefits in the month the lump sum was received and thereafter until the funds had been spent. The Secretary of Health and Human Services became concerned that this approach discouraged families from conserving lump sums for basic household expenses, and instead encouraged them to spend such sums rapidly in order to regain eligibility for AFDC benefits. Congress addressed this problem in the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2321, 95 Stat. 859-860, by providing that receipt of a lump sum disqualifies an AFDC household for as many months as the lump sum would meet the family's standard of need. See 42 U.S.C. 602(a)(17); *Lukhard* v. *Reed*, 481 U.S. 368, 371-372 (1987).

b. Respondents, representing a class of plaintiffs comprising all Georgia residents "who have been or will be found ineligible for AFDC benefits for a predetermined number of months as a consequence of receipt of lump sum income" (Pet. App. 33a), brought this action in July 1986 against petitioner,

the Commissioner of Georgia's Department of Human Resources. Respondents complained, *inter alia*, that persons who reported lump-sum income did not receive adequate notices of termination. The notice stated:

> Reason and Regulation for Action: Your income exceeds the payment standard in Georgia. Regulation: All countable income is budgeted against the state payment amount. Section: IV.

Pet. App. 40a.[2]

On respondents' motion for summary judgment, the district court held (Pet. App. 40a) that this notice was inadequate under 45 C.F.R. 205.10(a)(4)(i)(B). The district court concluded that the termination notice "fails to meaningfully inform the recipient of the reasons for the termination of AFDC or the impact that termination is likely to have on the recipient's future eligibility." Pet. App. 40a. As part of the remedy for the inadequate notice, the district court enjoined petitioner from undertaking any efforts to collect overpayments from AFDC recipients "who did not receive an adequate notice of termina-

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[2] The notice also provided a telephone number for obtaining free legal services, and stated:

> If, for any reason, you think proper consideration has not been given your situation, you have the right to appeal to the State Department of Human Resources for a fair hearing. Procedures for requesting a fair hearing are on the back of this form.
>
> If you request a fair hearing within 10 days from the date at the top of this form, your benefits will be continued or returned to the amount you received prior to this action unless the hearing officer decides the sole reason is one of State or Federal law or policy.

Compl. Exh. A.

tion when they reported the receipt of a lump sum." *Id.* at 28a-29a. Petitioner's motion for reconsideration of this aspect of the court's order was denied by the district court.[3] *Id.* at 13a-14a.

3. The court of appeals affirmed. Pet. App. 1a-9a. The only issue before that court was whether the district court had properly enjoined petitioner from recouping benefits "which the recipients received in violation of current AFDC program requirements but which they were entitled to receive under the previous law." *Id.* at 5a. The court recognized that federal law requires state agencies promptly to recover any overpayment under the AFDC program, *ibid.* (citing 42 U.S.C. 602(a)(22)), and noted that the Secretary defines an "overpayment" as a "financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible," *ibid.* (quoting 45 C.F.R. 233.20(a)(13)(i)). In this case, however, the district court held that the notices of termination were inadequate under federal regulations, and petitioner elected not to appeal that determination. The court of appeals determined (Pet. App. 6a) that the State's failure to appeal on the notice issue distinguished this case from *Gardebring* v. *Jenkins*, 485 U.S. 415 (1988).

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[3] The district court initially held (Pet. App. 35a-41a) that petitioner had also failed to provide respondents with adequate written notice of the new lump-sum rule, in violation of 45 C.F.R. 206.10(a)(2)(i). On motion for reconsideration, the district court reversed itself on this point in light of this Court's decision in *Gardebring* v. *Jenkins*, 485 U.S. 415 (1988). See Pet. App. 18a-19a. In addition, the district court held (*id.* at 41a-44a) that petitioner improperly terminated respondents from the Medicaid Program. Neither issue is presented in the petition for certiorari.

The court of appeals held that, because petitioner's notice of termination failed to meet the requirements of the federal notice regulations, "the state's attempted termination of the recipients' AFDC benefits became invalid." Pet. App. 6a (citing *Kimble* v. *Solomon*, 599 F.2d 599, 604 (4th Cir.), cert. denied, 444 U.S. 950 (1979)). "Because the state did not terminate the recipients in accordance with federal notice requirements," the court held, "the recipients' entitlement to aid was not affected. Consequently, they did not receive any overpayment." Pet. App. 7a. The court concluded that "any benefits the recipients received must be examined under pre-1981 law to determine whether the recipients were eligible to receive such funds," *id.* at 6a-7a, and noted the absence of any suggestion that respondents had received benefits to which they were not entitled under pre-1981 law.

The court of appeals also held (Pet. App. 7a-9a) that the Eleventh Amendment did not bar the district court from enjoining the State's efforts to recoup benefits because, in the court's view, the injunction did not impose a retrospective remedy but rather "sought to prevent state officials from future violations of federal law." Pet. App. 8a. See *Edelman* v. *Jordan*, 415 U.S. 651 (1974). Recognizing that the Eleventh Amendment bars AFDC recipients who did not appeal their terminations from seeking damages from the State, the court held that, because the State's inadequate notice did not affect recipients' entitlement to benefits, respondents did not receive an overpayment. The court rejected petitioner's argument that payments made to respondents during the pendency of their appeals are a form of compensation forbidden under *Green* v. *Mansour*, 474 U.S. 64, 68 (1985).

Since the benefits "were legally awarded," they "cannot be fairly characterized as compensatory." Pet. App. at 9a.

DISCUSSION

The court of appeals' decision rests on the view that Congress's decision to reduce AFDC entitlements is effective with respect to an individual claimant only after that claimant receives adequate notice of the reduction. We think that view is both incorrect and inconsistent with decisions of other courts of appeals in cases presenting related remedial issues. Moreover, the question decided by the court of appeals is of great importance to the administration of AFDC and other welfare programs. This Court granted certiorari on essentially similar questions in *Gardebring* v. *Jenkins*, 485 U.S. 415 (1988), and *Atkins* v. *Parker*, 472 U.S. 115 (1985), although it did not reach the remedial issue in either case. See 485 U.S. at 418; 472 U.S. at 123. Certiorari is also warranted in this case.

1. a. Because petitioner did not appeal from the district court's determination that the notices of termination were inadequate under 45 C.F.R. 205.10(a)(4)(i)(B), the court of appeals addressed only the question of the appropriate remedy for the inadequate notices.[4] The result of the state agency's failure to comply with federal notice regulations, the court said,

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[4] In fact, the termination notice met many of the requirements of 45 C.F.R. 205.10(a)(4)(i)(B). It was in writing, it informed the recipients that the agency intended to terminate AFDC benefits, it gave a general statement of the reason for the action (and provided a telephone number to obtain additional information), and it informed recipients of their right to hearing, and to continued benefits pending a hearing. See p. 4 and note 2, *supra*.

was that "the recipients' entitlement to aid was not affected." Pet. App. 7a. Thus, in the court of appeals' view, Congress's decision to amend the lump-sum rule in 1981 had no effect on respondents' entitlements, and respondents' benefits "must be examined under pre-1981 law." *Id.* at 6a.

The court of appeals' analysis confuses a claimant's *entitlement* to AFDC benefits with the *procedures* for ensuring that claimants receive the benefits to which they are entitled. This Court has recognized that Congress ha[s] plenary power to define the scope and the duration of the entitlement to [welfare] benefits, and to increase, to decrease, or to terminate those benefits based on its appraisal of the relative importance of the recipients' needs and the resources available to fund the program." *Atkins* v. *Parker*, 472 U.S. at 129. A rule that made entitlements turn on the action or inaction of welfare officials would be inconsistent with the principle that payments of money from the Treasury are limited to those authorized by Congress. See *Office of Personnel Management* v. *Richmond*, 110 S. Ct. 2465 (1990); *Schweiker* v. *Hansen*, 450 U.S. 785 (1981).

Congress has provided that a family in receipt of lump-sum income "*shall* be ineligible for aid" for a period of months equal to the amount received divided by the family's monthly standard of need. 42 U.S.C. 602(a)(17)(A) (emphasis added). And Congress expressly provided that the lump-sum rule "shall become effective on October 1, 1981" (or, if amendments to state law were necessary, on the first month after the first state legislative session ending on or after October 1, 1981). 95 Stat. 859-860. Thus, "Congress gave no indication whatsoever that the effective date for the new lump-sum rule could be de-

layed by the action or inaction of state agencies." *Gardebring* v. *Jenkins*, 485 U.S. 415, 438 (1988) (O'Connor, J., concurring in the judgment in part and dissenting in part).

In addition, Congress required that state agencies "promptly take all necessary steps to correct *any* overpayment or underpayment of aid under the State plan." 42 U.S.C. 602(a)(22) (emphasis added). Although Section 602(a)(22) contains an exception for individuals who are no longer receiving benefits in cases where the cost of recovery would equal or exceed the overpayment, it contains no exception for overpayments that result from agency errors. Accordingly, the Secretary's regulations define "overpayment" broadly as any "financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible." 45 C.F.R. 233.20(a)(13)(i). Nothing in the statute or the regulation suggests that the adequacy of the notice of a reduction in benefits determines whether the recipient has received an overpayment. The court of appeals' decision to the contrary is "clearly inconsistent with federal law." *Gardebring*, 485 U.S. at 437 (O'Connor, J., concurring and dissenting).

b. The court of appeals did not hold that the notices of termination in this case were constitutionally inadequate, nor did it base its decision on the Due Process Clause.[5] But in any event, the judgment in this case cannot be affirmed on due process grounds.

In *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), this Court held that the Due Process Clause requires state agencies to afford AFDC recipients notice and an oppor-

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[5] The court's discussion appears under the heading "Statutory Provisions," and cites only the notice provisions of 45 C.F.R. 206.10. See Pet. App. 6a-7a.

tunity to be heard before terminating their benefits. Nothing in *Goldberg* suggests that a recipient's right to procedural due process alters his substantive entitlement to welfare benefits. On the contrary, the Court noted that termination of benefits pending a hearing "may deprive an *eligible* recipient" of benefits, *id.* at 264, and said that the function of a pretermination hearing is to "protect a recipient against an *erroneous* termination of his benefit," *id.* at 267 (emphasis added). Moreover, the Court acknowledged the availability of recoupment under the governing law when it expressly noted the impracticability of recoupment in a case in which benefits had been stopped completely. The Court said: "[T]he benefits paid to ineligible recipients pending decision at the hearing *probably* cannot be recouped, since these recipients are likely to be judgment-proof." *Id.* at 266 (emphasis added).

This Court's subsequent decisions have consistently recognized that the Due Process Clause itself does not create substantive property rights. See, *e.g.*, *Mathews* v. *Eldridge*, 424 U.S. 319, 332 (1976) (protected interest in continued receipt of disability benefits is "statutorily created"); *Board of Regents* v. *Roth*, 408 U.S. 564, 577-578 (1972) ("Property interests * * * are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law."); *Richardson* v. *Belcher*, 404 U.S. 78, 81 (1971) (*Goldberg* "cannot be stretched to impose a constitutional limitation on the power of Congress to make substantive changes in the law of entitlement to public benefits"). See also *U.S. Railroad Retirement Bd.* v. *Fritz*, 449 U.S. 166, 174

(1980) (Congress may alter or eliminate non-contractual benefits at any time).[6]

Respondents contend (Br. in Opp. 8) that "the guarantees of the due process clause of the Constitution and the notice statutes and regulations are illusory" unless the government is required to give welfare recipients adequate notice before altering their substantive entitlement to welfare benefits. But as this Court recognized in *Goldberg*, the purpose of a pre-termination notice and hearing is to protect AFDC recipients from mistakes due to "honest error or irritable misjudgment." 397 U.S. at 266. Where the notice of termination is inadequate, the Due Process Clause affords the right to adequate notice and an opportunity to be heard, not a right to benefits in excess of those appropriated by Congress. In appropriate cases, the remedy for a procedural due process violation may include "*Quern* notices" to absent class members informing them of their right. See *Quern* v. *Jordan*, 440 U.S. 332 (1979). In other cases, file reviews may substitute for new notices. See *Foggs* v. *Block*, 722 F.2d 933 (1st Cir. 1983), rev'd on other grounds, 472 U.S. 115 (1985). These remedies, far from being "illusory," vindicate respondents' right to procedural due process. It is respondents who are seeking a remedy for an illusory constitutional right

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[6] Other decisions of this Court reinforce the conclusion that constitutionally inadequate procedures do not alter substantive entitlements. See *Carey* v. *Piphus*, 435 U.S. 247, 260 (1978) (if students would have been suspended had a proper hearing been held, they are not entitled to damages for injuries caused by the suspension); *Codd* v. *Velger*, 429 U.S. 624, 627 (1977) ("[I]f the hearing mandated by the Due Process Clause is to serve any useful purpose, there must be some factual dispute * * * which has some significant bearing on the employee's [protected interest].").

to retain welfare benefits never appropriated by Congress.[7]

Respondents also contend (Br. in Opp. 13) that the inadequate notices "placed the most vulnerable in our society, poor mothers and children, in dire life-threatening circumstances." To the extent that respondents are contending that the government is estopped from recouping AFDC benefits because it failed adequately to inform recipients of the reduction in their benefits, respondents are incorrect. See *Office of Personnel Management* v. *Richmond*, 110 S. Ct. 2465 (1990); *Schweiker* v. *Hansen*, 450 U.S. 785 (1981). Moreover, any harshness in this case results principally from the lump-sum rule itself rather than inadequate notice of the rule. As the Court noted in *Gardebring*, "it is not irrational to assume that most needy families will realize that the receipt of a large lump sum may affect future eligibility for benefits." 485 U.S. at 431. That assumption certainly is warranted in this case, since many respondents actually reported lump-sum income to the state agency. In addition, the 5% limitation on recoupment significantly mitigates the harshness of the result. See p. 2 *supra*.

2. The court of appeals' decision is inconsistent with the views expressed in Justice O'Connor's separate opinion in *Gardebring* v. *Jenkins*. *See* 485 U.S. at 437-438 (concluding that lump-sum rule applies whether or not recipient received notice in accord

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[7] Of course, if an overpayment is to be recovered by reducing a recipient's future benefits for a period of months, the recipient is entitled to adequate notice that such a reduction will occur. But that is not the issue here; the question presented by the decision below is whether an inadequate notice of termination precludes *any* recovery of overpayment on the theory that, as a result of the inadequate notice, there has been no overpayment at all.

with Secretary's regulation). In addition, the decision in this case is at odds with two decisions of the Ninth Circuit and one decision of the First Circuit on closely related remedial issues.

In *Medberry* v. *Hegstrom*, 786 F.2d 1389 (1986), the Ninth Circuit concluded that, where AFDC payments are continued pending a hearing, the period of ineligibility under the lump-sum rule runs from the receipt of the lump sum, not from the date the hearing is concluded. The Ninth Circuit agreed with the Secretary that "[i]f the family receives benefits during any month of the ineligibility period," the benefits must be treated as overpayments and recouped under 42 U.S.C. 602(a)(22), "irrespective of * * * any procedural delays in terminating benefits, such as a request for a fair hearing." 786 F.2d at 1391.

In *Turner* v. *McMahon*, 830 F.2d 1003 (1987), cert. denied, 488 U.S. 818 (1988), the Ninth Circuit held that state agencies are required to recoup AFDC payments made "under compulsion of an erroneous court order subsequently reversed by the Supreme Court." [8] 830 F.2d at 1005. The court concluded that

> [t]he plain language of [42 U.S.C.] 602(a)(22) mandating recovery of "any overpayment" does not distinguish between classes of overpayments that may be recouped. * * * Instead, use of the adjective "any" indicates that Congress intended that overpayments must be recouped without restriction.

830 F.2d at 1007. The Ninth Circuit noted that its reading of Section 602(a)(22) was reinforced by

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[8] The erroneous court order prohibited the state agency from treating mandatory payroll deductions as income to claimants. See *Turner* v. *Woods*, 559 F. Supp. 603 (N.D. Cal. 1982), aff'd, 707 F.2d 1109 (9th Cir. 1983), rev'd *sub nom. Heckler* v. *Turner*, 468 U.S. 1305 (1984).

the Secretary's regulation, which "broadly defines an overpayment as money received which exceeds the amount the individual was entitled to receive." *Ibid.* (citing 45 C.F.R. 233.20(a)(13)(i)).

Medberry and *Turner* cannot be reconciled with the court of appeals' conclusion in this case that, as a result of the inadequate notices, respondents received no overpayment. Whether the excess benefits are paid because the claimant pursues an administrative appeal (as in this case and in *Medberry*), or because of a court order (as in *Turner*), benefits in excess of the amounts authorized by Congress are "overpayments" subject to recoupment under 42 U.S.C. 602(a)(22).

The court of appeals' decision is also incompatible with the First Circuit's decision in *Foggs* v. *Block*, 722 F.2d 933 (1983), rev'd on other grounds *sub nom. Atkins* v. *Parker*, 472 U.S. 115 (1985). *Foggs* arose under the Food Stamp program, but it presented the same basic remedial question: whether, as a result of an inadequate notice of program changes, a welfare claimant may be entitled to benefit payments in excess of those authorized by Congress.[9] The First Circuit observed that "[p]ublic distributive programs are subject to majority action, i.e., Congress, which can increase, decrease, and terminate benefits." 722 F.2d at 937. Accordingly, the First Circuit declined to require the payment of "a windfall to recipients" who were seeking "a continuation of benefits at a level exceeding that authorized by Congress." 722 F.2d at 941. Instead, the court directed the state agency to review its files, and to restore benefits in any case

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[9] In *Atkins* v. *Parker, supra,* this Court reversed the First Circuit's holding that the notices were inadequate. Consequently, this Court did not consider the First Circuit's resolution of the remedial issue.

where claimants had received less than the amounts to which they were entitled by statute.[10] *Ibid.*

Respondents cite three court of appeals decisions for the proposition that "an improper or illegal individual notice will bar attempted termination of benefits." Br. in Opp. 8 (citing *Caldwell* v. *Wallace*, 755 F.2d 870 (11th Cir. 1985); *Buckhanon* v. *Percy*, 708 F.2d 1209 (7th Cir. 1983), cert. denied, 465 U.S. 1025 (1984); and *Kimble* v. *Solomon*, 599 F.2d 604 (4th Cir.), cert. denied, 444 U.S. 950 (1979)). But this formulation begs the question. It is true that federal courts may enjoin the reduction or termination of AFDC benefits until such time as the recipients have been given adequate notice and an opportunity to be heard. *Goldberg* v. *Kelly*, *supra*. Yet it does not follow that inadequate notice alters a claimant's substantive entitlement to welfare benefits or prevents state agencies from recouping payments in excess of those authorized by Congress.

In *Caldwell*, a Medicaid case, the state agency directed a notice of termination to the claimant's son, whose interest conflicted with the claimant's, rather than to the claimant herself. In ordering that a new notice be sent directly to the claimant, the court specifically stated that "[i]t is the lack of notice, and not the issue of entitlement, that concerns us." 755 F.2d at 873. The court did not consider, let alone approve, an injunction prohibiting the state from collecting overpayments.

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[10] Respondents attempt to distinguish *Foggs* on the ground that it concerned "mass notices" of a legislative change rather than individual notices of termination. Br. in Opp. 7-8. But respondents offer no convincing reason why inadequate individual notices, but not inadequate mass notices, should alter substantive entitlements to AFDC benefits.

The other two cases cited by respondent hold that it does not violate the Eleventh Amendment to order a State "to provide benefits under the prereduction standards until such time as the state effected a legally effective reduction of benefits by mailing adequate notice." *Buckhanon*, 708 F.2d at 1216 (citing *Kimble* v. *Solomon*, *supra*). Neither *Buckhanon* nor *Kimble* held that payments received pursuant to such an injunction are not "overpayments," nor did the courts in those cases permanently enjoin collection of such overpayments.

As a result of the court of appeals' decision in this case, AFDC claimants in Georgia who appealed their terminations, but not similarly situated recipients in other States, are "entitled" to have their benefits calculated under the pre-1981 lump-sum rule.[11] The decision thus creates a windfall for some recipients of lump sums. See *Johnson* v. *Likins*, 568 F.2d 79, 85 (8th Cir. 1977).

3. Petitioner also asks this Court to consider whether the district court's order enjoining petitioner from recouping overpayment of AFDC benefits violates the Eleventh Amendment. Pet. 18-25. In our view, this question—on which the courts of appeals are not in conflict—does not warrant certiorari.

If the Court agrees with us that the defective notices in this case did not alter respondents' sub-

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[11] Under the court of appeals decision, pre-1981 law applies to respondents who were not participating in the AFDC program in 1981, including Betty J. Wirtz (who applied for AFDC benefits in May 1986), Bonnie K. Allgood (who applied for AFDC benefits in July 1986), and Marta O. Turner (who applied for AFDC benefits in July 1984). See Plaintiffs' Statement of Undisputed Material Facts para. 31 and Attachment 3; Affidavit of Marta O. Turner para. 2 (Feb. 23, 1987).

stantive entitlement to AFDC benefits, it need not reach the Eleventh Amendment issue. The State is authorized and required by 42 U.S.C. 602(a)(22) to recoup overpayments to respondents. For that reason (and quite apart from Eleventh Amendment concerns), the district court's order enjoining petitioner from recouping overpayments is incorrect.

If, on the other hand, this Court agrees with the court of appeals that respondents were entitled to the benefits they have already received, then we believe the court of appeals was correct in holding that the Eleventh Amendment does not bar an order forbidding the State to recoup those benefits. It is true, as the court of appeals recognized (Pet. App. 8a), that the Eleventh Amendment bars AFDC recipients who did not appeal their terminations from seeking retroactive benefits. See *Edelman* v. *Jordan*, 415 U.S. 651 (1974). See also *Green* v. *Mansour*, 474 U.S. 64, 68 (1985) ("Compensatory or deterrence interests are insufficient to overcome the dictates of the Eleventh Amendment."). But it does not follow that the Eleventh Amendment confers on the States a prospective right to recover welfare benefits (1) that have already been paid and (2) to which the recipients were entitled. Although "the difference between the type of relief barred by the Eleventh Amendment and that permitted under *Ex parte Young* [209 U.S. 123 (1908)] will not in many instances be that between day and night," *Edelman*, 415 U.S. at 667, this Court's Eleventh Amendment decisions do not support the proposition that enjoining a state from recouping past welfare payments is "tantamount to requiring the State to provide retroactive benefits." Pet. 25. Accordingly, we believe the Eleventh Amendment issue warrants no further review.

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CONCLUSION

The petition for a writ of certiorari should be granted, limited to the first question presented.

Respectfully submitted.

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IN THE

Supreme Court of the United States

October Term, 1990

JAMES G. LEDBETTER, COMMISSIONER
GEORGIA DEPARTMENT OF HUMAN RESOURCES,
Petitioner,

v.

MARTA O. TURNER, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

AMICUS CURIAE BRIEF OF THE STATES OF MINNESOTA, CALIFORNIA, CONNECTICUT, FLORIDA, HAWAII, IOWA, KANSAS, KENTUCKY, LOUISIANA, MARYLAND, NEBRASKA, NEW JERSEY, NEVADA, NORTH CAROLINA, NORTH DAKOTA, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, UTAH, VERMONT, WASHINGTON, WEST VIRGINIA AND WYOMING AND THE DISTRICT OF COLUMBIA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

October Term, 1990

No. 90-644

JAMES G. LEDBETTER, COMMISSIONER
GEORGIA DEPARTMENT OF HUMAN RESOURCES,
Petitioner,

v.

MARTA O. TURNER, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
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AMICUS CURIAE BRIEF OF THE STATES OF MINNESOTA, CALIFORNIA, CONNECTICUT, FLORIDA, HAWAII, IOWA, KANSAS, KENTUCKY, LOUISIANA, MARYLAND, NEBRASKA, NEW JERSEY, NEVADA, NORTH CAROLINA, NORTH DAKOTA, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, UTAH, VERMONT, WASHINGTON, WEST VIRGINIA AND WYOMING AND THE DISTRICT OF COLUMBIA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

INTEREST OF THE AMICI STATES

The *amici* states file this brief with the Court because the Eleventh Circuit's decision in this case contradicts the express will of Congress regarding the Aid to Families with Dependent Children ("AFDC") program and has severe consequences for the administration of the AFDC program by the states. The *amici* states request that this court grant certiorari and reverse the circuit court's decision.[1]

AFDC is a federal-state public assistance program established under Title IV-A of the Social Security Act, 42 U.S.C. §§ 601-15 (1988). The program provides financial assistance and other services to needy children and the parents or relatives with whom they live. *Id.* at § 601.

The AFDC program is based on a scheme of "cooperative federalism." *King v. Smith*, 392 U.S. 309, 316 (1968). States which choose to participate in this optional program receive matching federal funds for payments made to needy children and families. Participating states are required to administer their AFDC programs in compliance with federal statutes and regulations promulgated by the Secretary of the federal Department of Health and Human Services ("Secretary" or "HHS"). *Id.*; 42 U.S.C. §§ 601, 602 and 604. The *amici* states, and indeed all states, have opted to participate in the AFDC program and are consequently obligated to comply with applicable federal statutes and regulations in the administration of the program.

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[1] The *amici* states, including the District of Columbia, file this brief *amicus curiae* pursuant to Supreme Court Rule 37.5 which provides for filing such a brief without consent of the parties.

The *amici* states present this brief in support of the Petition for Writ of Certiorari filed by Georgia's Commissioner of Human Resources. Georgia seeks review of the Eleventh Circuit's holding that, if a state fails to provide a recipient adequate notice of termination of benefits, the state may not recoup past AFDC payments even though the family was ineligible to receive the payments under federal law. This decision is clearly wrong. It confuses two distinct concepts—eligibility for benefits and the procedure for termination of benefit payments. It provides advocates a means of blocking the implementation of federal statutory changes by challenging the adequacy of state notices so that the recipients may permanently retain benefits for which they are indisputably not eligible. It weakens public respect for welfare programs by allowing non-needy persons to receive benefits on the basis of "procedural errors." It directly impacts the fiscs of the federal and state governments by requiring that scarce public welfare funds be spent to provide AFDC benefits to persons whom Congress itself declared ineligible. Moreover, as explained below, one of the *amici* states, California, has a case now pending before the Ninth Circuit which raises an issue similar to that raised here.[2]

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[2] Georgia also seeks review on a second question, whether the Eleventh Amendment precludes a federal court from enjoining state recovery of past overpayments. This *amicus curiae* brief addresses only the first, "overpayment," issue.

REASONS FOR GRANTING THE WRIT

I. THE ELEVENTH CIRCUIT'S DECISION, THAT RECIPIENTS MAY RETAIN BENEFIT PAYMENTS TO WHICH THEY WERE NOT ENTITLED UNDER AFDC ELIGIBILITY STATUTES, CONFLICTS WITH THE PRINCIPLES OF DECISIONS OF AT LEAST ONE OTHER CIRCUIT COURT AS WELL AS THE OPINION OF THREE JUSTICES OF THIS COURT.

The overpayments in this case resulted from the application of the AFDC "lump-sum" statute. The lump-sum statute was one of many amendments to the AFDC eligibility laws adopted by Congress in the Omnibus Budget Reconciliation Act of 1981 ("OBRA"), Pub. L. No. 97-35, 95 Stat. 357 (1982). The lump-sum statute, 42 U.S.C. § 602(a)(17), provides essentially that a family which receives an amount of nonrecurring lump-sum income is ineligible for AFDC benefits for the number of months that the income would satisfy the family's standard of need. The "eligibility" language of the statute states:

> [T]he family . . . *shall be ineligible for aid under the plan for the whole number of months* that equals (i) the sum of such amount and all other income received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family . . . .

Id. (emphasis added). Thus, the lump-sum statute specifies a statutory "period of ineligibility" which results from an AFDC family receiving a lump-sum payment.

The Secretary's implementing regulation specifies when the period of ineligibility begins: "The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month."

45 C.F.R. § 233.20(a)(3)(ii)(F) (1989).[3] Therefore, the fact of ineligibility, the length of the ineligibility period, and when the ineligibility period must occur, are all dictated by federal law.

The 1981 OBRA amendments not only made persons who received lump-sum payments ineligible for AFDC benefits for certain periods, those amendments also required that a state agency must recoup all "overpayments" made to recipients. 42 U.S.C. § 602(a)(22). Under the Secretary's regulations, an overpayment "means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible." 45 C.F.R. § 233.20(a)(13)(i) (1989). Overpayments are recouped from persons who are current AFDC recipients by withholding small amounts from current AFDC payments.[4] Since a recipient who receives a lump-sum amount greater than AFDC income limits is ineligible for AFDC for a specified period, any benefits paid during that period constitute overpayments and must be recouped.

In the instant case, the plaintiff recipients received lump-sum payments and consequently were ineligible for fixed periods of time under federal law. The State of Georgia issued termination notices to the recipients in order to halt AFDC benefits during the remainder of the recipients' periods of

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[3] For administrative purposes, the payment month corresponding to a "budget month" may be the budget month or one of the following two months. 45 C.F.R. §§ 233.31-.32 (1989).

[4] Under section 602(a)(22)(A), no more than 10% of the current monthly payment may be withheld to recoup an overpayment. Many states have chosen to recoup overpayments from current recipients at even slower rates. In Minnesota, for example, recoupment of an overpayment based upon an administrative error may not exceed 1% of the current monthly payment. *See* Minn. Stat. § 256.73, subd. 8(b) (1990).

ineligibility.[5] Some of the recipients appealed the proposed terminations and chose to continue receiving benefits pending resolution of their appeals. *See* 45 C.F.R. § 205.10(a)(6)(i) (1989). The district court found that the termination notices were inadequate, *i.e.*, that they failed to meet the requirements of federal regulations for such notices. Pet. App. A40-A41. Because the notices were inadequate, the district court enjoined the state from recouping AFDC payments made to recipients during their statutory periods of ineligibility. Pet. App. A14, A28-A29. On appeal, the Eleventh Circuit affirmed this decision saying, "Because the state did not terminate the recipients in accordance with federal notice requirements, the recipients' entitlement to aid was not affected. Consequently, they did not receive an overpayment." Pet. App. A7.

The Eleventh Circuit's decision is clearly contrary to the federal lump-sum and overpayment statutes. The circuit court held that recipients' entitlement to assistance was not affected because termination notices were inadequate. Federal law does not base entitlement to AFDC on adequacy or inadequacy of termination notices. Rather, the statute provides that a family which receives lump-sum income "shall be ineligible" for a fixed period. 42 U.S.C. § 602(a)(17). Moreover, federal law requires a state to recoup any overpayment, 42 U.S.C. § 602(a)(22), and states that an overpayment is a payment "which exceeds the amount for which that unit was eligible." 45 C.F.R. § 233.20(a)(13)(i). Thus, the recipients in this case clearly received overpayments (amounts greater than they were eligible to receive) and the amounts were subject to recoupment.

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[5] The court of appeals' statement that recipients received termination notices *after* their terminations, Pet. App. A3, is apparently erroneous. The district court correctly noted that recipients received notices that their benefits "would be terminated." Pet. App. A40.

It must be recognized that the principle of the Eleventh Circuit's decision is not limited to ineligibility based upon the lump-sum statute, but instead would apply to ineligibility based upon almost all of the eligibility provisions of federal and state law. Moreover, the circuit court's holding, that there cannot be an overpayment for a period prior to a valid termination (or reduction) notice, fundamentally misperceives the relationship between eligibility and notice of termination or reduction. An applicant or recipient is eligible or ineligible for AFDC benefits by operation of the eligibility statutes and regulations. Any amount received by a recipient which exceeds the amount for which that person was eligible is an overpayment. The termination or reduction notice is merely the procedural device used to actually stop or reduce the current payment of benefits.[6]

Notice and opportunity for hearing prior to discontinuation of public assistance benefits is required by federal regulation, 45 C.F.R. § 205.10(a)(6)(i) (1989), and by due process. *Goldberg v. Kelly*, 397 U.S. 254 (1970). The reason for this requirement is to protect a recipient's right not to have public assistance benefits *erroneously* reduced or terminated. *Id.* However, it has never been suggested that the requirement of notice and an opportunity for hearing before terminating benefits was intended to allow recipients to retain benefits to which they were not entitled under eligibility rules. Instead, where a person receives benefits pending notice and oppor-

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[6] Termination or reduction notices and overpayments are related to this extent: Where the state proposes to reduce a recipient's grant by a small amount to recoup a past overpayment, the recipient is entitled to receive notice and opportunity to appeal *that* reduction. Thus, the recipient may appeal the correctness of the overpayment determination.

tunity for hearing, the benefits paid are ultimately subject to recovery if it is determined that the recipient was not eligible to receive them. This is specifically provided by federal regulations, 45 C.F.R. §§ 205.10(a)(6) and 233.20(a)(13)(i) (1989), and was explicitly acknowledged by this Court in *Goldberg*, 397 U.S. at 266. *See also Edelman v. Jordan*, 414 U.S. 1301, 1302-03 (1973) (Rehnquist, J., circuit justice, granting stay).

Judicial remedies may be appropriate where a state has provided inadequate termination or reduction notices. In appropriate cases, benefits may be judicially reinstated pending proper notice of termination or reduction and opportunity to appeal from that action. *Cf. Foggs v. Block*, 722 F.2d 933 (1st Cir. 1983), *rev'd on other grounds sub nom. Atkins v. Parker*, 472 U.S. 115 (1985) (court rejected reinstatement of benefits remedy where possibility of erroneous termination or reduction was low). However, these remedies have nothing to do with allowing recipients to keep benefits for which they were not eligible.

The Eleventh Circuit's decision conflicts—in principle if not directly—with two decisions of the Ninth Circuit and a concurring/dissenting opinion by three justices of this Court. *See Medberry v. Hegstrom*, 786 F.2d 1389 (9th Cir. 1986); *Turner v. McMahon*, 830 F.2d 1003 (9th Cir. 1987), *cert. denied*, 488 U.S. 818 (1988); *Gardebring v. Jenkins*, 485 U.S. 415 (O'Connor, J., concurring in part and dissenting in part).

In *Medberry*, the state had a policy of not beginning a lump-sum period of ineligibility until *after* the resolution of any recipient appeal of the proposed termination. Recipients challenged this policy in federal court, contending that the federal lump-sum regulation required that the period of ineligibility must begin immediately after receipt of the lump-sum, and

not at a later time. They argued that any AFDC payments received during months that the family was ineligible for AFDC (while the family appealed the termination) should be treated as overpayments. 786 F.2d at 1390. The Ninth Circuit requested an amicus brief from the Secretary giving her interpretation of the applicable federal regulation. In her brief, the Secretary told the court that she interpreted her regulation (45 C.F.R. § 233.20(a)(3)(ii)(F))

> to require that, when an AFDC family receives lump sum income, the period of ineligibility must begin no later than the corresponding payment month *irrespective* of the month of discovery of the receipt of lump-sum income or *of any procedural delays in terminating benefits*, such as a request for a fair hearing. *If the family receives benefits during any month of the ineligibility period, they are considered to be overpayments* that must be recovered in accordance with section 402(a)(22) of the Act, 42 U.S.C. § 602(a)(22), as implemented.

786 F.2d at 1391 (emphasis added). The circuit court adopted the Secretary's interpretation, holding that the initiation of the ineligibility period could not be delayed until after notice of termination and resolution of any appeal. The court said, "The overpayments to ineligible recipients are recouped like any other overpayments . . . ." *Id.* at 1392.[7]

A year later, in *Turner v. McMahon*, the Ninth Circuit again considered a case involving the recoupment of AFDC over-

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[7] *Medberry* illustrates that overpayment and termination are distinct concepts. An overpayment may occur without a notice of termination ever being issued. In the lump-sum context, this could occur if, *e.g.*, the lump-sum payment is not reported to the agency until the ineligibility period is completed or there is agency delay in terminating benefits.

payments, this time based on a different eligibility statute. Over the state's objection, the state had been required to make AFDC payments to the plaintiff recipients under court injunction. That injunction was later overturned by this Court in *Heckler v. Turner*, 470 U.S. 184 (1985). The state then proposed (at the Secretary's direction) to recoup as overpayments the erroneous payments made pursuant to the earlier, overturned court order. The recipients sought to enjoin the recoupment, claiming that payments made pursuant to court order were not overpayments. The district court enjoined the recoupment, but the Ninth Circuit reversed, based upon the plain language of the federal overpayment statute and regulations:

> The record shows that the State made AFDC payment to appellees during the period of the permanent injunction which exceeded the amount the appellees were entitled to receive under the AFDC program. The statute does not distinguish overpayments made as the result of a court order.

830 F.2d at 1007-08.

Both *Medberry* and *Turner v. McMahon* are contrary to the Eleventh Circuit decision in this case. In *Medberry*, the Ninth Circuit held that a recipient *is ineligible* during the period prescribed by federal law, without regard for any delays in terminating benefits. In *Turner v. McMahon*, payments which exceeded the amounts to which the recipients were entitled under the eligibility statutes were subject to recovery as overpayments, even though they were paid pursuant to court order. Obviously, the state had not issued termination notices before making the court-ordered payments. Those cases stand for the simple proposition that an overpayment (or underpayment) is

judged merely by comparing the amount the recipient was paid with the amount the recipient was entitled to receive under the eligibility statutes and rules.

In a 1988 case arising from Minnesota, *Gardebring v. Jenkins*, 485 U.S. 415 (1988), this Court accepted review of an issue essentially identical to the issue presented here. In that case, the Eighth Circuit had ruled that Minnesota failed to give adequate advance notice of the lump-sum rule to AFDC recipients. The state sought to recoup benefits paid to one of the recipients during the period while she unsuccessfully appealed the termination of her benefits. The circuit court said that the state's recoupment should be enjoined:

> [T]he payments to Jenkins cannot be considered an overpayment, because the defendant, having failed to provide adequate notice to Jenkins of the lump-sum rule, cannot properly invoke it against her. By failing to comply with the notice regulations, [the State] failed to institute a legal change in its eligibility rules.

Slaughter v. Levine, 801 F.2d 288, 301-02 (8th Cir. 1986).

This Court granted certiorari in *Gardebring* to consider two questions: first, whether the state had failed to provide notice required by federal regulations and, second, even if the state had not provided required notice, whether the state was precluded from recouping payments made during Jenkins' period of ineligibility. 108 S.Ct. at 1308. The majority of the Court held that the state's notice procedure did not violate federal law. Consequently, the majority did not reach the overpayment issue. *Id.*

Three justices of this Court, however, did reach the overpayment issue. Justice O'Connor wrote a concurring/dissenting opinion in which Justices Brennan and Marshall joined.

Justice O'Connor concluded that the state's advance notice was not adequate under the federal regulations, but that the state must nevertheless recoup the amounts paid to Jenkins during her period of ineligibility:

> Whether or not Jenkins received notice in accord with the Secretary's regulation, therefore, the lump-sum rule applied to her when her husband received the retroactive disability payment in 1983. The Department was accordingly required by federal law to recoup the overpayments that she received during her appeal of the Department's decision to apply the new lump-sum rule in her case.

485 U.S. at 438 (O'Connor, J., concurring in part and dissenting in part). The clear point of Justice O'Connor's opinion is that the existence of an overpayment is determined by whether the recipient received an amount greater than the recipient's entitlement under eligibility statutes and rules, and not by whether a state gave adequate notice.

At least since 1986, when *Slaughter* and *Medberry* were decided by the Eighth and Ninth Circuits, a state's obligation and authority to recover overpayments in situations where the state has not provided adequate notice or has failed to promptly terminate benefits has been in a state of confusion. The Eleventh Circuit decision in this case only adds to that confusion, because it is inconsistent with the Ninth Circuit decisions in *Medberry* and *Turner v. McMahon*, as well as the concurring decision in *Gardebring*.

Amicus State of California currently has a case awaiting decision in the Ninth Circuit Court of Appeals which would be directly impacted by the decision in this case. The case is *Rosas, et al. v. Linda McMahon, Director of the California Department of Social Services v. Louis Sullivan, Secretary of*

HHS, Nos. 89-15443, 89-15525 and 89-15442. *Rosas* deals with two extremely complicated changes made in the AFDC law by Congress in the Deficit Reduction Act of 1984 ("DEFRA"), Pub. L. No. 98-269, 98 Stat. 494 (1984). It took the state and its counties several months to promulgate necessary regulations, train eligibility workers and gather necessary facts from recipient families to implement the new provisions. As a result, several months after the effective date of the DEFRA changes, many families affected by the new laws received notices that their grants were being terminated or reduced as a result of the new laws *and* that they had received overpayments in the past. The *Rosas* plaintiffs argued that the state could not recover excess benefit payments for periods before the state gave notices of benefit reduction or termination. The district court agreed with plaintiffs that advance notice was required, but held nonetheless that the payments were overpayments which could be recouped. Both sides appealed. The plaintiffs, citing the Eleventh Circuit decision in this case, argued that no law change can be effective until after the recipient receives notice of the change and that, consequently, there were no overpayments.

This Court has already accepted this issue once, in *Gardebring*, but the issue was not addressed because the case was decided on other grounds. The instant case squarely presents the issue and would result in a definitive resolution of the issue by this Court. Consequently, the state *amici* request that this Court accept review of the case to resolve the conflicting decisions of the circuit courts as well as the conflict between the Eleventh Circuit's decision and the view already expressed by three justices of this Court.

II. THE ELEVENTH CIRCUIT'S DECISION IS CLEARLY CONTRARY TO FEDERAL LAW AND RAISES IMPORTANT QUESTIONS WHICH THIS COURT SHOULD ADDRESS.

The above discussion of the conflict which exists among the federal courts concerning the issue raised by this case also shows that the Eleventh Circuit's decision incorrectly interprets federal law. There are, however, additional reasons why the lower court decision is wrong and why it raises an important question of federal law which this Court should address.

The court of appeals here held that the state should be enjoined from recovering overpayments from recipients because the state *erred* in failing to provide adequate pretermination notice to recipients. However, overpayments must be corrected whether they are a result of recipient error or agency error. This was specifically noted by the Secretary in rulemaking proceedings concerning the federal overpayment regulation:

> Comment: One commentator suggested that we should not require states to recover overpayments that result from administrative errors.
>
> Response: We do not believe that the statute permits exceptions to recovery nor does it differentiate based on the source of error. . . .

47 Fed. Reg. 5,648, 5,672 (1982).

The *amici* states are particularly concerned about the Eleventh Circuit decision because the court's reasoning could apply, not only to payments made after inadequate termination notices, but to most overpayments. Overpayments occur

for a variety of reasons, ranging from administrative errors to recipients failing to report changed circumstances. The states and their local agencies make millions of AFDC eligibility and benefit determinations each month based on the individual circumstances of families and the application of a multitude of complex federal and state statutes and regulations. In a program of this size, implemented ultimately by local caseworkers based upon information provided by recipients, many errors (both overpayments and underpayments) are bound to occur.[8] Where an overpayment or underpayment is the result of a mistake, the agency will obviously not precede the payment with a notice that an overpayment or underpayment is being made. Yet, the Eleventh Circuit's decision would preclude the recovery of such overpayments because prior notice had not been given that benefits would be reduced or terminated. The decision would thus prevent the correction of administrative or recipient errors.

The federal overpayment statute requires correction of both overpayments and underpayments. *See* 42 U.S.C. § 602(a)(22). The policy of the AFDC program operates to insure that eligible recipients are paid the correct amount of their

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[8] Precise figures on the number or dollar amount of AFDC overpayments throughout the country are unavailable. However, in enacting OBRA, Congress estimated that, over a sample six-month period, 23.5% of AFDC cases (or almost 800,000 cases nationwide) involved erroneous payments—90% of which were overpayments rather than underpayments. Congress projected a savings to the federal government of $115 million in 1982 from correcting such overpayments and underpayments. S. Rep. No. 139, 97th Cong., 1st Sess. 519, reprinted in 1981 U.S. Code Cong. & Ad. News 396, 785. This is not the total overpayment figure, since it is *reduced* by an estimate of underpayments corrected. More importantly, the $115 million is only the federal government's share (approximately one-half) of AFDC payments. The states' share would double the amount.

eligibility entitlements. *Jacquet v. Westerfield*, 569 F.2d 1339, 1344 (5th Cir. 1978); *cf. Foggs v. Block*, 722 F.2d 933, 941 (1st Cir. 1983), *rev'd on other grounds sub nom. Atkins v. Parker*, 472 U.S. 115 (1985). Because welfare funds are limited, failure to recoup overpayments will eventually diminish funds available for distribution to all welfare recipients. *Johnson v. Likins*, 568 F.2d 79, 85 (8th Cir. 1977). Moreover, failure to recover overpayments " 'would give overpayment recipients an unfair windfall when compared with other recipients'." *Id.* (quoting *Steere v. State Dep't of Pub. Welfare*, 243 N.W.2d 112, 126 (Minn. 1976)).

The circuit court's decision produces such a "windfall" result. The lump-sum statute was enacted because Congress wanted recipients to use their lump-sum income, instead of AFDC, to support themselves. *See* S. Rep. No. 139, 97th Cong. 1st Sess. 754, reprinted in 1981 U.S. Code Cong. & Ad. News 396, 771. Under the circuit court's decision, some recipients are allowed to have the full use of their lump-sum payments and receive AFDC benefits for the same periods, a result exactly contrary to Congress' purpose.

The lower court's decision also negates Congress' determination of when the lump-sum statute was to take effect. In enacting OBRA in 1981, Congress intended to alter federal fiscal policies and to restrain federal spending "in order to wage an effective battle against the high inflation and unemployment which [had] plagued the national economy for many years." S. Rep. No. 139, 97th Cong., 1st Sess. 3, reprinted in 1981 U.S. Code Cong. & Ad. News 396, 398. In furtherance of this goal, OBRA substantially amended the AFDC statute in order to tighten eligibility requirements and reduce program expenditures. To achieve the intended cost savings, Congress mandated that the changes be implemented promptly—by

October 1, 1981 or after the next legislative session if state statutory changes were required. Pub. L. No. 97-35, § 2321, 95 Stat. 357, 859-60 (1982).

Under the circuit court's decision, the lump-sum statute did not become fully effective in Georgia in 1981 as directed by Congress. Instead, as to persons who elected to receive AFDC benefits pending their administrative appeals, the statute became effective several years later when the federal court finally determined what notice of termination would be adequate. *See* Pet. App. A20, A40. The circuit court held that, "[b]ecause the state did not terminate the recipients in accordance with federal notice requirements, the recipients entitlement to aid was not affected." Pet. App. A7. Thus, the court of appeals nullified the effective date specified by Congress. This fact was clearly recognized in the concurring/dissenting opinion in *Gardebring*: "Congress gave no indication whatsoever that the effective date for the new lump-sum rule could be delayed by the action or inaction of state agencies." *Id.*, 485 U.S. at 438. Indeed, if states could delay the effect of federal benefit cuts by giving inadequate notices, "[s]tate agencies might even find this an attractive possibility, inasmuch as it would have the net effect of temporarily protecting the state's recipients from the effect of statutory benefit reductions." *Foggs v. Block*, 722 F.2d 933, 941 (1st Cir. 1983); *rev'd on other grounds sub nom. Atkins v. Parker*, 472 U.S. 115 (1985).

The court of appeals' decision cannot be justified on a theory of equitable estoppel or any similar theory. The obligation of the courts to apply the laws as written by Congress, even despite agency error, is clear. The courts may not require that public benefits be paid contrary to the statutory conditions governing those benefits. *Office of Personnel Manage-*

ment v. Richmond, ___ U.S. ___, 110 S.Ct. 2465 (1990); *see also Schweiker v. Hansen*, 450 U.S. 785, 790 (1981) ("A court is no more authorized to overlook the valid regulation requiring that applications be in writing than it is to overlook any other valid requirement for the receipt of benefits."); *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385 (1947) (it is the "duty of all courts to observe the conditions defined by Congress for charging the public treasury.").

It is significant that neither the statutes nor the Secretary's regulations provide, as a remedy for a state's failure to provide adequate termination notice, that the eligibility requirements will not be applied according to their clear terms. "[J]udicial use of equitable estoppel cannot grant . . . a money remedy Congress has not authorized." *Office of Personnel Management*, 110 S.Ct. at 2472. Moreover, the federal agency has "the primary responsibility for fashioning the appropriate remedy for violation of its regulations." *United States v. Caceres*, 440 U.S. 741, 756 (1979). Not only has the Secretary not promulgated a rule relieving recipients of eligibility requirements in cases of agency errors, the Secretary has done just the opposite. The Secretary has required that all overpayments and underpayments be corrected, regardless of the source of the error, so that to the extent possible each recipient receives exactly the amount to which he or she is entitled under federal law.

The implications of the circuit court's holding, that the state cannot legally effectuate a congressionally mandated eligibility requirement by recovering overpayments if it has failed to give recipients adequate notice, are enormous. Those far-reaching effects are well illustrated by this case. Respondents, attempting to defeat or postpone Congress' 1981 changes, attacked the adequacy of the state's pre-implementa-

tion and pre-termination notices. Six years after the implementation by the state, the federal court held that the state's notice was inadequate and therefore retroactively held that the lump-sum amendment was not fully effective in Georgia on the date prescribed by Congress. Recipients may thus turn the notice issue into a weapon for delaying or defeating the implementation of countless legislative judgments about AFDC eligibility. If the court of appeals' order is allowed to stand, it will seriously disrupt the ability of states to implement changes in federal law in a timely, predictable and final manner, as well as the ability of Congress to dictate when and on what conditions changes are to be made. It will directly impact federal and state treasuries by requiring that public AFDC moneys may not be recovered from recipients, even where the recipients were ineligible for the benefits under federal law.

CONCLUSION

The question presented here is important both to the states and to the administration of federal-state public assistance programs. The lower court's decision conflicts in principle with the decisions of another circuit, with the opinion of three justices of this court and with the views expressed by the Secretary in other litigation. For these reasons, the *amici* states respectfully request that the petition for a writ of certiorari be granted to consider the overpayment issue.

Dated: November, 1990.

Respectfully submitted,

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No. 90-644

In The

Supreme Court of the United States

October Term, 1990

JAMES G. LEDBETTER, COMMISSIONER
GEORGIA DEPARTMENT OF HUMAN RESOURCES,

Petitioner,

v.

MARTA O. TURNER, et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

SUPPLEMENTAL BRIEF OF RESPONDENTS

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No. 90-644

In The

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JAMES G. LEDBETTER, COMMISSIONER
GEORGIA DEPARTMENT OF HUMAN RESOURCES,

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v.

MARTA O. TURNER, et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

SUPPLEMENTAL BRIEF OF RESPONDENTS

This brief is submitted to supplement respondents' Brief in Opposition to the granting of certiorari in this case. It is submitted in response to the amicus briefs of the various attorneys general and the U.S. Solicitor General's office. Respondents maintain that this matter is not appropriate for Supreme Court review.[1]

[1] Neither the various attorneys general nor the U.S. Solicitor's Office argue that this Court should accept this case to consider the Eleventh Amendment issue raised by the State of Georgia and, accordingly, respondents do not address that issue here.

1. THE REMAINING RELIEF ISSUE IN THIS CASE AFFECTS A SMALL NUMBER OF GEORGIA AFDC RECIPIENTS AND A SMALL AMOUNT OF MONEY

Contrary to the implications of the Petitioner and amici, the decision in this case is of significance only to a very few AFDC recipients in Georgia. This decision only affects AFDC recipients who received lump sums of money, and after receiving undisputedly inadequate notices of termination, then appealed the decision within ten days so that they would continue to receive AFDC benefits. 45 C.F.R. § 205.10 (a)(6)(i). By contrast, the vast majority of recipients who received lump sums of money and received the inadequate notices were terminated, were assessed overpayments, and have already had these monies collected by the state.[2]

The sole remaining issue in this case is the State of Georgia's attempt to collect money from these very few AFDC recipients who received AFDC benefits pending their appeal. During the five years of this litigation, respondents have identified only seven AFDC recipients with lump sum penalties who were either named plaintiffs in the original action or whose files were examined in discovery. Petitioner did not identify any classmembers. During this litigation the State of Georgia was not ordered to specifically identify any other recipients who may have been affected because the state alleged it would have been too costly. Petitioner's Reply Br. at 2. As stated

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[2] Everyone agrees that, because of the Eleventh Amendment, the federal courts cannot order the State of Georgia to return these benefits to the AFDC recipients.

in respondents' Brief in Opposition to the Petition for Certiorari, the largest alleged AFDC overpayment identified was Marta Turner's $1,152.00.

Thus, these seven individuals appear to constitute the entire class of AFDC recipients in Georgia that would be affected by this Court's consideration of this case. No one has suggested that there will be any other individuals in the country directly affected by this ruling. While some of the states and the Solicitor General's Office have asked this Court to use its limited resources and time to expand and extrapolate legal principles, the number of people affected and the amounts of money at issue in this case are simply not worthy of the Court's time.

2. THE SCOPE OF THE *TURNER v. LEDBETTER* DECISION IS LIMITED TO ITS FACTS

The Court of Appeals for the Eleventh Circuit in *Turner v. Ledbetter*, 906 F.2d 606 (11th Cir. 1990), held that the district court did not abuse its discretion in fashioning relief for the violations of federal notice requirements by the State of Georgia. *Turner*, 906 F.2d at 609. The relief was closely tied to the distinct facts of this case: (1) the absence of even minimally adequate notice advising plaintiffs of the reason for their terminations, (2) the distinct importance of notice of a lump sum penalty so that the money received can be properly budgeted, and (3) a recipient's likely reliance on the old rule unless given adequate notice.

The district court found, and the Eleventh Circuit affirmed, that the notices of AFDC termination given by

the State of Georgia were inadequate.[3] The State of Georgia did not dispute or appeal this finding. None of the amici states attorneys general argue that it is the policy or practice of their states to provide inadequate AFDC lump sum termination notices. Yet, by insisting this case applies to them, they argue that if their states also have policies of providing inadequate lump sum penalty termination notices, recipients challenge the notices and prevail, and some of the recipients continue receiving benefits because of administrative appeals, states would be bound by *Turner v. Ledbetter*. The factual situation in *Turner* has not occurred previously and is not likely to repeat itself in the context of this now almost ten year old lump sum penalty regulation.

None of the dire predictions of the amici flow from this decision. The holding turns on the special nature of the change in law regarding the lump sum penalty rule and the special nature of the notice in this case. It is consistent with other cases where the circuit courts have upheld relief ordered by district courts when the state's procedures were held inadequate and terminations based on those procedures were nullified. *Buckanon v. Percy*, 708 F.2d 1209 (7th Cir. 1983), *cert. denied*, 465 U.S. 1025 (1984); *Kimble v. Solomon*, 599 F.2d 599 (4th Cir. 1979), *cert. denied sub nom. Buck v. Kimble*, 444 U.S. 950 (1979); and *Caldwell v. Wallace*, 755 F.2d 870 (11th Cir. 1985). The relief upheld

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[3] The trial court found no need to reach a constitutional question when it found the notice given here clearly violated the "substantive and regulatory notice provisions." Petition for Writ of Certiorari at 33a, Trial Court Order of June 24, 1987. 45 C.F.R. § 205.10(a)(4)(i)(A),(B).

in these particular cases has not affected the states' ability to collect overpayments in the AFDC programs or other public assistance programs, nor does *Turner* have such an effect.

3. THERE IS NO CONFLICT AMONG THE CIRCUITS ON THIS ISSUE

Recognizing that *Turner* is an isolated decision, unlikely to recur, presenting no conflict with any other decision by any other circuit court of appeals, amici attorneys general, nevertheless argue that there is a "conflict in principle" between this holding and two Ninth Circuit cases. *Turner* does not conflict in principle or otherwise with the circuit court cases cited, *Medberry v. Hegstrom*, 786 F.2d 1389 (9th Cir. 1986), and *Turner v. McMahon*, 830 F.2d 1003 (9th Cir. 1987), *cert. denied*, 488 U.S. 818 (1988).

Medberry v. Hegstrom, supra, challenged a policy of the State of Oregon that determined when the lump sum period of ineligibility should begin. The federal lump sum rule requires that recipients suffer a prospective period of ineligibility for AFDC benefits determined by looking at the size of the lump sum in relation to the state standard of need. The federal AFDC statute, 42 U.S.C. § 602(a)(17), states that the period of ineligibility runs from the time the lump sum is received. Oregon, however, in direct violation of federal regulations, delayed the implementation of the penalty until the lump sum was discovered by the agency or until all appeals were exhausted before beginning the ineligibility period. This policy hurt AFDC recipients because delaying the period of ineligibility until long after the lump sum was received

often meant that the family had already exhausted the lump sum. The court in *Medberry* ordered Oregon to begin the period of ineligibility from receipt of the lump sum and held that if benefits were improperly paid during the ineligibility period, they were to be recovered by normal overpayment methods. This was precisely the relief plaintiffs in *Medberry* requested because recovery was preferable to an ineligibility period with no funds.

The only issue in the *Medberry* case therefore was *when* the lump sum period of ineligibility began. This was a substantive legal question decided on the statutory language of the lump sum rule and the federal agency interpretation of an explicit federal rule. Plaintiffs in *Medberry* did not contend and the court did not hold that procedures for termination based on a lump sum payment were defective. Therefore, there was no basis for claiming that overpayments should not be recovered. Procedures used by the State of Oregon to terminate plaintiffs were *adequate* and plaintiffs did not claim otherwise. In contrast, *Turner* holds that where procedures for terminating AFDC benefits to recipients who received lump sums after 1981 were *inadequate*, a district court can hold that overpayments did not occur and nothing may be recovered. *Turner*, 906 F.2d at 609. The issue was never raised or addressed in *Medberry*, and there would have been no basis for doing so in that case.

The other case cited by amici is *Turner v. McMahon*, 830 F.2d 1003 (9th Cir. 1987). *Turner v. McMahon* addressed the issue of whether AFDC paid pursuant to an erroneous court order, later revised, can be recovered as an overpayment. The Ninth Circuit held that AFDC payments made to a class of recipients which are later

determined by a higher court to be erroneously paid are "overpayments" within the meaning of 42 U.S.C. § 602(a)(22) and therefore are subject to recovery. Again, the Ninth Circuit did not address the question of whether a district court could order a state to refrain from recovery of benefits paid pending an administrative hearing where statutory or constitutionally improper procedures were used to terminate an AFDC recipient's benefits. It is not inconsistent for the holding in *Turner v. McMahon* to exist alongside a holding that, although a state must recover AFDC paid pursuant to a court decision, which was subsequently overturned, a district court still can order a state to refrain from collecting benefits received by recipients who did not receive adequate notice of termination. The holdings in *Turner v. McMahon* and *Turner v. Ledbetter*, therefore, are different but not inconsistent.

Amici attorneys general also assert a conflict exists with *Rosas v. McMahon*, 700 F. Supp. 467 (N.D. Cal. 1988). There is no appellate decision because the case is still pending before the Court of Appeals for the Ninth Circuit, and, therefore, no conflict exists.

Critically, the difference between *Turner v. Ledbetter* and all of the cases cited by amici is that in all of the cases cited, the district courts found that an overpayment had occurred. In *Turner* the district court specifically held, and the Eleventh Circuit affirmed, that no overpayment of AFDC benefits occurred. *Turner*, 906 F.2d at 609. The district court considered that it was crucial for adequate notice to be provided at a time when recipients could have budgeted their funds to avoid undue hardship. Because no proper notice was provided, the court found

no overpayments existed. The State of Georgia did not appeal the court's finding that no overpayment occurred, but appealed to the Eleventh Circuit only on the issue of the injunction which barred the state from the collection of overpayments. See p. 1a, *infra*, Petitioner's Notice of Appeal. Accordingly, whether overpayments occurred within the meaning of 42 U.S.C. § 602(a)(22) is not before this Court.

4. CONCLUSION

In sum, the *Turner v. Ledbetter* decision affects a small number of AFDC recipient families in Georgia and involves a small amount of money. It is a narrow decision upholding district court relief in a unique situation unlikely to recur in the same form elsewhere in the country. Finally, respondents have shown that there is no conflict among the circuits on this issue. For these reasons respondents ask this Court to deny certiorari.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MARTA O. TURNER, IRENE EDWARDS, and MARGIE RAY, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,	:	CIVIL ACTION FILE NO.
Plaintiffs	:	
v.	:	C-86-199-HLM
JAMES G. LEDBETTER, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE GEORGIA DEPARTMENT OF HUMAN RESOURCES,	:	
Defendant	:	

NOTICE OF APPEAL

Notice is hereby given that James G. Ledbetter, in his official capacity as commissioner of the Georgia Department of Human Resources hereby appeals to the United States Court of Appeals for the Eleventh Circuit from that portion of the Judgment of the Honorable Harold L. Murphy, entered in this action on the 12th day of October, 1989, which enjoined the Defendant from the collection of overpayments as ordered in the Court's orders of March 30, 1989, and June 30, 1989.

This 20th day of October, 1989.

Respectfully submitted,

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